FREE COPY

Office - Supreme Court, U
FILED
SEP 14 1953
HAROLD B. WILLEY, Cler

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 343

G. SEALS AIKEN,

Appellant,

vs.

WILLIAM RICHARDSON.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

STATEMENT AS TO JURISDICTION

G. SEALS AIKEN,
In Propria Persona.

BEN F. SWEET,
F. L. BREEN,
Of Counsel.

INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	1
Georgia statutes questioned	2
Timeliness	3
Opinions	4
Statement of the nature of the case and rulings of the court bringing it within jurisdictional provisions relied on, and cases believed to sustain jurisdiction	4
How federal questions sought to be reviewed were raised, and the way in which they were passed upon by the court	13
Grounds upon which it is contended the federal questions thus involved are substantial	23
Conclusion	29
Appendix "A"—Opinion of the Supreme Court of Georgia, dated May 12th, 1953	30

Table of Cases Cited

Abbott v. *National Bank of Commerce of Tacoma, Washington*, 175 U. S. 409, 20 Sup. Ct. 153	24
Aiken v. *Richardson*, 207 Ga. 735, 64 S. E. 2d 54, 85 Ga. App. 180, 68 S. E. 2d 228, 344 U. S. 802, 73 Sup. Ct. 15, 73 Sup. Ct. 282	6, 10
Avery v. *State of Georgia*, 345 U. S. 559, 73 Sup. Ct. 891	27
Breen v. *Phillips, et al.*, 169 Ga. 13, 149 S. E. 565	17
Chapman v. *Crane, Admr.*, 123 U. S. 540	11
Chipman v. *Barron*, 2 Ga. 230	17, 27
Cooke v. *United States*, 267 U. S. 517, 45 Sup. Ct. 390	12
Felton v. *Smith, et al.*, 52 Ga. App. 436, 183 S. E. 634	17
Gallegos v. *State of Nebraska*, 342 U. S. 55, 72 Sup. Ct. 141	22
Hague, Mayor, et al. v. *C. I. O.*, 307 U. S. 496, 59 Sup. Ct. 954	28

Page

Haverty Furniture Company v. *Calhoun*, 15 Ga. App. 620, 84 S. E. 138 27
Haygood v. *Haden*, 119 Ga. 463, 46 S. E. 625 17
Herndon v. *Lowry*, 301 U. S. 242 ..... 18, 19
Holcombe v. *Dupree*, 50 Ga. 336 17
Hovey v. *Elliott*, 167 U. S. 409 ..... 8, 11, 12, 15, 24, 28
In re: Oliver, 333 U. S. 257, 68 Sup. Ct. 499 12
Jones v. *Jones*, 181 Ga. 747, 184 S. E. 271 12
Lawrence, et al. v. *State Tax Commission of Mississippi*, 286 U. S. 276, 52 Sup. Ct. 556 28
Lovell v. *City of Griffin*, 55 Ga. 609, 191 S. E. 152, 303 U. S. 444, 58 Sup. Ct. 666 ..... 11, 12
Manley v. *State of Georgia*, 279 U. S. 1, 49 Sup. Ct. 215 12
McCullough v. *State*, 11 Ga. App. 612, 76 S. E. 393 27
Mitchum v. *State*, 11 Ga. 633 ..... 27, 28
Moody and Wife v. *Davis*, 10 Ga. 411 28
Niemotko v. *State of Maryland*, 340 U. S. 268, 71 Sup. Ct. 325 28
Norris v. *Alabama*, 294 U. S. 587, 55 Sup. Ct. 579, ... 11, 12, 22, 27
North Carolina Railroad Company v. *Zachary*, 232 U. S. 248, 34 Sup. Ct. 305 28
People of the State of New York, ex rel. Bryant v. *Zimmerman, et al.*, 278 U. S. 63, 49 Sup. Ct. 61 11
Prescott v. *Bennett*, 50 Ga. 268 12
Riverside and Dan River Cotton Mills, Incorporated v. *Menefee*, 237 U. S. 189, 35 Sup. Ct. 579 20
Texas v. *White*, 10 Wall. 483 12
Towns v. *Springer*, 9 Ga. 130 12
United States v. *Dixon*, 40 U. S. 141 28
United States v. *Lee*, 106 U. S. 196, 1 Sup. Ct. 261 28
United States v. *Walker*, 109 U. S. 258, 3 Sup. Ct. 282 12
Urie v. *Thompson*, 337 U. S. 163 28
Wakefield v. *Moore*, 65 Ga. 268 ..... 12, 27
Western and Atlantic Railroad v. *Henderson*, 279 U. S. 639, 49 Sup. Ct. 445 12
Yick Wo v. *Hopkins*, 118 U. S. 356, 6 Sup. Ct. 1064 ..... 11, 12, 17
Zucht v. *King*, 260 U. S. 174, 43 Sup. Ct. 25 15

Statutes and Other Authorities Cited

	Page
Act of Congress of January 31st, 1928, Chapter 14, 45 Stat. 54	2
Act of Congress of April 26th, 1928, Chapter 440, 45 Stat. 466	2
Constitution of the United States, Fourteenth Amendment, Section I	9, 10, 11, 12, 13, 14, 18, 19, 21, 23
Georgia Code, Section 2-3704	11
Section 24-206	9, 18, 23
Section 24-210	9, 13, 16, 23, 24
Section 110-701	13
Section 110-702	7, 13
Section 110-709	13
Georgia State Constitution of 1945, Article VI, Section II, Paragraph IV	11
Judicial Code, Section 237(a) (28 U. S. C. 344)	1
United States Code Annotated, Title 28, Section 1257	2

THROUGH POOR COPY

BLEED

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 343

G. SEALS AIKEN,

Appellant,

vs.

WILLIAM RICHARDSON.

STATEMENT AS TO JURISDICTION

In compliance with Rule 12(1) of the Rules of the Supreme Court of the United States, Appellant files a Statement as to Jurisdiction, disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the decision of the Supreme Court of Georgia in this case.

Statutory Provisions Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237(a) of the Judicial Code (U. S. C. Sec. 344), reading as follows:

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had . . . where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the constitution, treaties, or laws

THROUGH POOR COPY

> of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ of error shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of said State Court, and may, in its discretion, award execution or remand the cause to the Court from which it was removed by the writ."

and under U. S. C. A. Title 28, Section 1257, providing in part as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * *
>
> "(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be had as a matter of right on writ of error.

Georgia Statutes Questioned

In this case, the validity of certain Statutes of the State of Georgia, as construed and applied by the Supreme Court of Georgia to the pleadings in this case and the acts and activities of Appellant as set forth hereinafter in this Statement, are drawn in question on the ground of their being repugnant to the Constitution of the United States, and the decision of the Supreme Court of Georgia in this

case is in favor of the validity of said Statutes. The Statutes drawn in question are as follows:

> Georgia Code Section 24-210: "The officer called on by rule nisi, as provided in the preceding section, shall fully respond in writing to said rule, which answer shall be under oath taken at the time the answer is filed; and if the answer is not denied, the rule shall be discharged, or made absolute, according as the court may deem the answer sufficient or not. The movant of the rule may traverse the truth of such answer, in which case an issue shall be made up and tried by a jury at the same term, unless good cause of continuance be shown, which may be done once only by either party. Upon the trial of such issue the court shall discharge the rule, or make the same absolute, according as the verdict of the jury may be for or against the officer."
>
> Georgia Code Section 24-206: "If any sheriff, coroner, justice of the peace, constable, clerk of the superior court, or attorney at law shall fail, upon application, to pay to the proper person or his attorney any money he may have in his hands, which he may have collected by virtue of his office, the party entitled thereto or his attorney may serve said officer with a written demand for the same; and if not then paid, for such neglect or refusal the said officer shall be compelled to pay at the rate of 20 per cent per annum upon the sum he has in his hands, from the date of such demand, unless good cause is shown to the contrary."

Timeliness

The Supreme Court of Georgia rendered its decision in this case on May 12, 1953 ("Appendix A"; R. 96). On May 20, 1953, Appellant duly and properly filed his Motion for Rehearing with the Supreme Court of Georgia (R. 100-124, 125), which was denied on June 11, 1953. Appellant presented a Motion for Reconsideration, and it was ordered filed and denied by said Court on July 15, 1953 (R. 126-

THROUGH POOR COPY

137). The Supreme Court of Georgia is the highest Court of this State, and its decision of May 12, 1953, in this case became final on July 15, 1953. The Petition for Appeal and other papers required by the Rules of this Court are filed within 90 days from the date said decision of the Supreme Court of Georgia became final, and this appeal is therefore timely made.

Opinions

The opinion of the Supreme Court of Georgia of May 12, 1953, is attached hereto as "Appendix A." It also appears in the record at Pages 96-99.

Statement of the Nature of the Case and Rulings of the Court Bringing it within Jurisdictional Provisions Relied On, and Cases Believed to Sustain Jurisdiction.

On May 28, 1949, Judge R. H. Pharr of the Superior Court of Fulton County, Georgia, issued a Penal Rule Nisi against Appellant, a member of the Bar of Georgia since June 2, 1920, ordering him to show cause why he should not be required to pay over to Appellee the sum of $2,283.33, and why, after a hearing, a Rule Absolute should not be issued against Appellant commanding him to make immediate payment of said sum. This Penal Rule was based upon a motion of Appellee charging Appellant with a number of crimes, including the following: Solicitation of the legal business of Appellee; forging the name of Appellee on a draft; wrongfully withholding from Appellee the sum of $2,283.33 allegedly due him out of collection; false representations; false swearing, etc. Appellant duly filed his sworn answer setting up his contract of employment, denying in toto the charges made, showing he had paid appellee the exact and specified amount ($1,591.33) due him under the contract (as evidenced by a photostatic copy of said

check, R. 23), and showing he was not (and had not been) in contempt of court, and that he was not guilty of any of the charges made against him in said penal proceeding.

Therefter, Appellee filed a Traverse of Appellant's Answer, raising many issues of fact. Georgia Code Section 24-210 provides that such issues of fact must be determined by a jury upon submission of evidence, but the said statute was construed and applied to Appellant to permit the striking of his answer and the entering of a rule absolute against him for $2,189.38 and twenty per cent per annum penalty thereon from May 23, 1949, until paid, and all costs, without the submission of evidence, without a trial, and without a jury; thereby depriving Appellant of due process of law and of equal protection of the law in violation of Section I of the Fourteenth Amendment of the Constitution of the United States by adjudging him in contempt of court (not in presence of court), and subjected him to being incarcerated in jail and disbarred upon his failure to comply with said penal rule absolute.

On June 21, 1949, Appellee filed a Motion to Strike Appellant's original Answer. On October 23, 1950, Judge Andrews of Fulton Superior Court sustained Appellee's special grounds 2, 3, 4, and 5 of said Motion, but overruled the general grounds 1 and 6. In overruling general grounds 1 and 6, Judge Andrews then unmistakably held that the Appellant's Answer did set forth an issuable defense and did show reason why a Rule Absolute should not issue. The order further provided that, "The respondent is hereby allowed ten days to amend his answer."

Appellant did not file an amendment under said order because he had already filed an answer denying the charges and setting up the contract and alleging he had paid Appellee the exact and specified amount ($1,591.33) due him thereunder, and Judge Andrews had ruled, as aforesaid, that his answer set forth an issuable defense and showed

reason why a Rule Absolute should not issue, and this ruling had never been vacated or set aside and therefore fixed the law of the case in said respect.

On November 3, 1950, Appellee filed another Motion to strike Appellant's Answer, upon the ground that no amendment had been filed by Appellant in ten days "as allowed" by the order of October 23, 1950, and prayed for a Rule Absolute.

Notwithstanding the fact that Superior Court Judge Andrews had overruled general grounds 1 and 6 of Appellee's Motion to strike Appellant's Answer (the effect of which was to hold that Appellant's Answer contained allegations setting up triable issues of fact), the said Judge on November 17, 1950, struck Appellant's Answer, and on November 20, 1950, entered a penal Rule Absolute against Appellant for $2,189.38 and 20 per cent penalty per annum thereon from May 23, 1949, until paid, and all costs, without any evidence, without a trial, and without an opportunity to Appellant to present any evidence whatever in his own behalf.

Appellant appealed to the Supreme Court of Georgia from said decision, and that Court in *Aiken* v. *Richardson and Vice Versa*, 207 Ga. 735, 64 S. E. 2nd 54(3), transferred the case to the Court of Appeals of Georgia with the statement that, "There is no attack upon the constitutionality of any statute." Thereafter, the Court of Appeals of Georgia, in *Aiken* v. *Richardson*, 85 Ga. App. 180, 68 S. E. 2nd 228, affirmed the Superior Court. Appellant then applied to the Supreme Court of Georgia for a writ of certiorari to review the decision of the Court of Appeals of Georgia. Said writ was denied. Appellant then appealed to the Supreme Court of the United States from the Court of Appeals of Georgia. This Court, in *Aiken* v. *Richardson*, 344 U. S. 802, 73 S. Ct. page 15, dismissed Appellant's appeal "for the want of a substantial federal

question." Appellant filed a Petition for Rehearing, which was denied on December 15, 1952 (73 S. Ct. 282).

* * * * * * *

On January 12, 1953, Appellant filed in the Superior Court of Fulton County, Georgia, a Motion, as authorized by Georgia Code Sections 110-701, 110-702, and 110-709, to Vacate and Set Aside the Rule Absolute, as void for want of jurisdiction, which was entered against him in the penal and contempt Money Rule proceeding, on the ground that it appeared on the face of the record or pleadings that the said penal Rule Absolute was entered against him without a trial, without any evidence whatever against him, without any opportunity whatever to present any evidence in his own behalf, and without a jury, and that the said record and pleadings, therefore, presented on their face a "defect not amendable," requiring the judgment to be set aside as void under Georgia Code Section 110-702. Appellant urged in said motion to set aside said Rule Absolute that it was void for want of jurisdiction in that the Georgia statutes under which it was entered under the circumstances stated, as construed and applied to the acts, activities, and pleadings of Appellant in this case, are repugnant to Section I of the Fourteenth Amendment of the Constitution of the United States, for the reason that they deprived Appellant of due process of law in violation of said Amendment by permitting the arbitrary striking of his Answer denying guilt in said penal Money Rule proceeding, and the entering of a Rule Absolute against him for said principal, penalty, and costs, without any evidence whatever in support of said order, without a trial, without a jury, and without the right to Appellant to present any evidence whatever in his own behalf, and subjecting Appellant to being incarcerated in jail and disbarred unless he complies with said penal Rule Absolute;

such a judgment being described by the U. S. Supreme Court in *Hovey* v. *Elliott*, 167 U. S. 409, as "void for want of jurisdiction . . . a mere arbitrary edict, clothed in the form of a judicial sentence."

Judge Moore of Fulton Superior Court overruled Appellant's said Motion to Set Aside said Rule Absolute, and Appellant thereupon appealed to the Supreme Court of Georgia (the highest court of this State) on said Federal constitutional grounds, and excepted and assigned error upon every one of the grounds of his Motion to Set Aside, in his Bill of Exceptions to the Supreme Court of Georgia. That Court affirmed Judge Moore and rendered a decision on May 12, 1953, in favor of the validity of the above quoted Georgia Statutes, as construed and applied to Appellant, and which were attacked by Appellant as repugnant to the Fourteenth Amendment of the Constitution of the United States. Appellant duly filed a Motion for Rehearing in the Supreme Court of Georgia, urging and insisting upon all of his Federal constitutional grounds as set forth in his Motion to Set Aside the Rule Absolute as Void, and in his Bill of Exceptions. The said Court overruled said Motion for Rehearing on June 11, 1953, without any change in its decision. A Motion for Reconsideration was presented to the Supreme Court of Georgia on June 22, 1953, and was denied on July 15, 1953.

On the hearing in the Superior Court before Judge Moore on Appellant's said Motion to Set Aside the Rule Absolute as Void, the said Judge allowed Appellant to introduce evidence in the form of affidavits, depositions, and other documents. This evidence was not objected to by counsel for Appellee, and no evidence was offered by him. The brief of said evidence presented by Appellant on said Motion to Set Aside was incorporated in the Bill of Exceptions to the Supreme Court of Georgia and certified by Superior Court Judge Moore as true and correct. The said evidence showed

positively and without contradiction that all of the charges made against Appellant in said penal proceeding were untrue; that Appellant was not (and had not been) in contempt of court; that he had paid Appellee immediately upon collection the exact amount ($1,591.33) due him under the contract of settlement, and as admitted by Appellee in his own deposition, which Appellant introduced on said hearing before Judge Moore. Judge Moore, nevertheless, overruled said Motion to Set Aside the Rule Absolute. Appellant orally excepted to the judgment of Judge Moore in overruling said Motion to Set Aside at the time it was rendered, and excepted and assigned error thereon in his Bill of Exceptions to the Supreme Court of Georgia upon his State and Federal constitutional grounds, as set forth in said Motion to Set Aside and in said Bill of Exceptions (R. 84-86; 6-16).

Appellant drew in question in his Motion to Set Aside before Judge Moore, in his Bill of Exceptions to the Supreme Court of Georgia, in his briefs, Motion for Rehearing, and Motion for Reconsideration in the Supreme Court of Georgia, the validity of the Georgia Statutes identified as Georgia Code Sections 24-210 and 24-206 on the ground of their being repugnant to the Fourteenth Amendment of the U. S. Constitution as construed and applied to Appellant in this case.

Appellant also excepted and assigned error in said manner to said ruling of Judge Moore on the ground that it deprives him of his property in the amount of the Rule Absolute and of his liberty if he does not submit to said deprivation, all without due process of law and without equal protection of the law in violation of Section I of the Fourteenth Amendment of the Constitution of the United States, by upholding said Rule Absolute entered after striking Appellant's Answer denying guilt, and without any evidence, without a trial, and without any opportunity

to Appellant to present any evidence in his own behalf or to argue his case.

The decision of the Supreme Court of Georgia of May 12, 1953, shows that the said Court did not even mention or consider, in arriving at its decision affirming Judge Moore, the evidence presented to the said Judge by Appellant on the hearing of said Motion to Set Aside. Appellant urged in his Motion for Rehearing and in his Motion for Reconsideration (R. 100, 126) in the Supreme Court of Georgia that the decision of said Court affirming Judge Moore in overruling the Motion to Set Aside the Rule Absolute, after Judge Moore went behind the same and allowed said evidence presented by Appellant, deprived Appellant of due process of law and of equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, in that the said evidence showed without contradiction that all of the charges made against Appellant in said penal proceeding were untrue, that Appellant was not (and had not been) in contempt of court, that he had paid Appellee immediately upon collection the exact amount ($1,591.33) due him under the contract of settlement, and as admitted by Appellee in his deposition, which Appellant introduced on said hearing before Judge Moore.

The prior appeal of this case to the Supreme Court of the United States was from the Court of Appeals of Georgia, the appeal to the Supreme Court of Georgia having been transferred to the Court of Appeals of Georgia upon the ground that there were no constitutional questions and that there was "no attack upon the constitutionality of any statute." *Aiken* vs. *Richardson*, 207 Ga. 735, 64 S. E. 2nd 54(3). Under the Constitution of Georgia the Supreme Court of Georgia has exclusive jurisdiction in cases which involve "the construction of the Constitution of the State of Georgia or of the United States" and "in all cases in

which the constitutionality of any law of the State of Georgia or of the United States is drawn in question." (Article VI, Section II, Paragraph IV of the Constitution of Georgia of 1945 Georgia, Code Section 2-3704.)

The Supreme Court of Georgia expressly states in its decision here appealed from that it "has jurisdiction . . . because of the attack on the constitutionality of Code Section 24-206," but claims it was not necessary to pass upon said constitutional question. It was necessary, however, to pass upon the substantial Federal constitutional questions adequately and duly raised and insisted upon by Appellant in this case, under the facts and circumstances briefly presented in this Statement, and as fully shown by the record, and the effect of the decision of the Supreme Court of Georgia is necessarily in favor of the validity of the Georgia statutes attacked by Appellant as being repugnant to Section I of the Fourteenth Amendment of the U. S. Constitution. *Hovey* v. *Elliott*, 167 U. S. 409, 17 S. Ct. 841; *Lovell* v. *City of Griffin*, 303 U. S. 444, 58 S. Ct. 666; *Norris* v. *Alabama*, 294 U. S. 587, 55 S. Ct. 579; *Yick Wo* v. *Hopkins*, 118 U. S. 356, 6 S. Ct. 1064; *Chapman* v. *Crane, Admr.*, 123 U. S. 540. The other Georgia Statutes attacked by Appellant as repugnant to the U. S. Constitution, in said Motion to Set Aside and in the appeal to the Supreme Court of Georgia, were not specifically mentioned in its decision, but the effect of said decision was also in favor of their validity. *People of the State of New York ex rel. Bryant* v. *Zimmerman, et al.*, 278 U. S. 63, 49 S. Ct. 61.

The following applicable and controlling authorities show beyond question that it was not too late for Appellant to attack, in the motion to set aside the penal rule absolute as void, the Georgia Statutes therein assailed as repugnant to the Fourteenth Amendment of the U. S. Constitution, as construed and applied to him, and that the

said Statutes as so construed and applied are undoubtedly repugnant to the Fourteenth Amendment of the U. S. Constitution:

Hovey v. *Elliott*, 167 U. S. 409; 17 S. Ct. 841;
Prescott v. *Bennett*, 50 Ga. 268;
Wakefield v. *Moore*, 65 Ga. 268, Georgia Code Sections 110-701, 110-702, and 110-709;
Jones v. *Jones*, 181 Ga. 747, 184 S. E. 271;
Towns v. *Springer*, 9 Ga. 130;
Texas v. *White*, 10 Wall. 483;
In re: Oliver, 333 U. S. 257, 68 S. Ct. at 499;
Cooke v. *U. S.*, 267 U. S. 517, 45 S. Ct. 390;
Manley v. *State of Georgia*, 279 U. S. 1, 49 S. Ct. 215;
Western & Atlantic R. R. v. *Henderson*, 279 U. S. 639, 49 S. Ct. 445; 303 U.S. 944 58 S. Ct. 666;
Lovell v. *Griffin*, ~~55 Ga. 609, 191 S. E. 152;~~
Norris v. *Alabama*, 294 U. S. 587, 5 St. Ct. 579;
Yick Wo v. *Hopkins*, 118 U. S. 356, 6 S. Ct. 1064.

And see also *U. S.* v. *Walker*, 109 U. S. 258, 3 S. Ct. 282, holding that, "Although a court may have jurisdiction over the parties and the subject-matter, yet if it makes a decree which is not within the powers granted to it by the law of its organization, its decree is void."

The foregoing authorities also show conclusively that it was not too late for Appellant to attack, as void for want of jurisdiction and as denying due process of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, the Rule Absolute itself in Appellant's said Motion to Set Aside the same, and that it is void for said reasons.

How Federal Questions Sought to Be Reviewed Were Raised, and the Way in Which They Were Passed upon by the Court.

I

The Federal question presented in the first assignment of error in the present appeal was raised, as authorized in Georgia Code Sections 110-701, 110-702, and 110-709, in the Superior Court of Fulton County, Georgia, in Appellant's Motion filed in that Court on January 12, 1953, to Vacate and Set Aside, as void for want of jurisdiction and as denying due process of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, the penal Rule Absolute entered against Appellant, without evidence and without a trial, in said Penal and Contempt Money Rule proceeding (R. 7-8). It was also urged before said Court orally and by assignment of error thereon in the hearing on said Motion. It was then preserved and insisted upon by incorporating it in the Bill of Exceptions (R. 86) to the Supreme Court of Georgia and duly certified as true by Presiding Judge Moore of the Superior Court. The substance of said exception and assignment was that the Georgia Statute identified as Georgia Code Section 24-210, as construed and applied to Appellant in this Penal and Contempt Money Rule proceeding as herein set forth, is repugnant to and violative of Section I of the Fourteenth Amendment of the Constitution of the United States in that the words:

> "The officer called on by rule nisi, as provided in the preceding section, shall fully respond in writing to said rule, which answer shall be under oath taken at the time the answer is filed; and if the answer is not denied, the rule shall be discharged, or made absolute, according as the court may deem the answer sufficient or not,"

have been construed and applied to authorize the court, in its discretion and without evidence or trial, to determine whether the respondent has fully responded and to find the answer to be vague, indefinite, and evasive, even though it contains issuable facts and shows reasons why a Rule Absolute should not be issued, and to be stricken for evasiveness, and to render a Rule Absolute against respondent under said circumstances, without evidence and without a trial, even though the answer of the respondent has been traversed by the movent of the rule. That the Statute as thus construed is too vague and indefinite to provide a sufficiently ascertainable standard of guilt and permits the Court in its arbitrary discretion, without evidence and without a trial, to adjudge the respondent guilty of the criminal charges in the Penal and Contempt Money Rule, and to sentence and punish him accordingly. That as thus construed and applied to Appellant, a citizen of the United States, the said Statute deprives him of his property in the amount of the Rule Absolute, and of his liberty if he fails to surrender his property as required by said arbitrary Rule Absolute, without due process of law and without equal protection of the law, in violation of Section I of the Fourteenth Amendment of the U. S. Constitution. That the said Statute, as thus construed and applied to Appellant, declares him guilty or presumptively guilty of the crimes charged against him in said Penal Rule, and that the said Statute therefore creates a presumption that is arbitrary and operates to deny a fair opportunity to repel it, and thus violates the due process clause of the Fourteenth Amendment of the U. S. Constitution, which provides that no state shall deprive any person of life, liberty, or property without due process of law. That, as construed and applied, it violates said provision of the Constitution because it vests arbitrary, unlimited, and discriminatory

power in any Superior Court Judge to strike the answer of the respondent denying the criminal charges in the Penal Rule issued against him by the said Judge, or any judge, and to adjudge the respondent guilty and sentence and punish him accordingly, without any evidence and without a hearing. That the said Statute is repugnant to Section I of the Fourteenth Amendment of the U. S. Constitution for the reason that it has been construed and applied to Appellant in such a manner as to deprive him of due process of law in violation of said amendment by permitting the arbitrary striking of his answer denying guilt in said Penal Money Rule proceeding, and the entering of a Rule Absolute against him for said principal, penalty, and costs, without any evidence whatever in support of said judgment, without a trial, without a jury, without the right to Appellant to present any evidence whatever in his own behalf, and subjecting Appellant to being incarcerated in jail and disbarred if he fails to comply with said Penal Rule Absolute.

The substantial Federal question presented in this ground of Appellant's Appeal is practically identical with that involved in the case of *Hovey* v. *Elliott*, 167 U. S. 409, 17 S. Ct. 841 (a penal money rule case like the one at bar), holding in the headnotes as follows:

> "1. . . . it is a denial of due process of law to strike out an answer, and render a decree pro confesso as a punishment for contempt.
>
> "2. A judgment pro confesso against a defendant whose answer has been stricken out under the assumed power to thus punish for contempt is void for want of jurisdiction, and may be collaterally attacked."

It is *not* a case *like Zucht* v. *King*, 260 U. S. 174, 43 S. Ct. 25, involving the police power of a state to provide for compulsory vaccination, in which this court held that the ques-

THROUGH POOR COPY

tion as to the validity of the ordinance there involved was not sufficiently substantial to support the writ of error in view of the prior decisions of this court that, "It is within the police power of a state to provide for a compulsory vaccination." This court also said in that case:

> "Unlike Yick Wo v. Hopkins, 118 U. S. 356, 6 Sup. Ct. 1064, 30 L. Ed. 220, these ordinances confer not arbitrary power, but only that broad discretion required for the protection of the public health."

The case at bar clearly comes within the prohibition of the Fourteenth Amendment as stated in *Yick Wo* v. *Hopkins, supra.* In *Hovey* v. *Elliott, supra,* the U. S. Supreme Court has specifically held that it is a denial of due process of law in violation of the Fourteenth Amendment to strike out the answer of a defendant in a Penal Money Rule proceeding and render a decree *pro confesso* against him as a punishment for contempt. *There are no decisions to the contrary.*

The construction and application of the Georgia Statute here involved (Georgia Code Section 24-210) to Appellant to allow the striking of his sworn answer denying guilt and showing innocence in a penal proceeding and adjudging him guilty of the crimes charged against him in said penal proceeding by entering a Penal Rule Absolute against him (without a trial and without any evidence) requiring him to pay the arbitrary sum of $2,189.38 principal and 20 per cent penalty per annum thereon from May 23, 1949, clearly brings the said Statute within the prohibition of the Fourteenth Amendment of the U. S. Constitution, as shown by *Hovey* v. *Elliott, supra.* It places Appellant in the position of holding his "means of living, or any material right essential to the enjoyment of life, at the mere will of another" (the Judge who rendered said "arbitrary edict" against him), and this is "intolerable in any country where freedom

BLEED.

prevails, as being the essence of slavery itself." In the language of the U. S. Supreme Court in *Yick Wo* v. *Hopkins*, 118 U. S. 356, 6 S. Ct. 1064, even if said statute could be considered as "fair on its face, and impartial in appliance, yet" *it has been applied and administered to Appellant in the particulars briefly stated above "by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights," Appellant being thereby denied equal justice in violation of the Fourteenth Amendment.*

As stated by the Supreme Court of Georgia in *Holcombe* v. *Dupree*, 50 Ga. 336, the very foundation of a Rule Absolute is the contempt of court. This is in accordance with the uniform decisions of the U. S. Supreme Court. *Texas* v. *White*, 10 Wall. 483. All the authorities, Federal and State, are to the effect that this is a penal proceeding. *Texas* v. *White, supra; Haygood* v. *Haden*, 119 Ga. 463, 46 S. E. 625; *Breen* v. *Phillips et al.*, 169 Ga. 13, 149 S. E. 565; *Felton* v. *Smith et al.*, 52 Ga. App. 436, 183 S. E. 634; *Chipman* v. *Barron*, 2 Ga. at page 230.

The only reason Appellant is not now in jail under said Penal Rule Absolute is because he has made the required legal bond in such a case preventing his being incarcerated in jail pending the decision of this court on his Federal constitutional grounds presented in this appeal.

In the case of *Yick Wo* v. *Hopkins*, 118 U. S. 356, 6 S. Ct. 1064, the Appellant was "adjudged to pay a fine of $10, and, in default of payment, be imprisoned in the county jail at the rate of one day for each dollar of fine until said fine should be satisfied." In the case at bar, Appellant has been summarily ordered in a penal proceeding, without a trial and without evidence, to pay Appellee the arbitrary sum of $2,189.38 and 20 per cent penalty per annum thereon until

THROUGH POOR COPY

paid (which amounts to over $4,000 at the present time) and he will be incarcerated in jail and disbarred if he does not comply with said "arbitrary edict."

Jurisdiction of this court on this ground is supported by the authorities already cited on pages 11 and 12 of this Statement and by *Herndon* v. *Lowry,* 301 U. S. 242.

II

The Federal question presented in the second assignment of error was raised, urged, insisted upon, and preserved in the same manner as the first Federal question (R. 15, 86). The substance of said exception and assignment of error was that the Georgia Statute identified as Georgia Code Section 24-206, as construed and applied to Appellant in this Penal and Contempt Money Rule proceeding as herein set forth, is repugnant to and violative of Section I of the Fourteenth Amendment of the U. S. Constitution in that it permitted the arbitrary striking of his answer denying guilt and showing he had paid Appellee the exact amount ($1,591.33) due him under the contract of settlement, and the entering of a Rule Absolute against him for $2,189.38 with 20 per cent penalty per annum thereon from May 23, 1949, until paid, and all costs, without any evidence in support of said Rule Absolute, without any opportunity to Appellant to present any evidence in his own behalf, without a trial, and subjecting Appellant to being incarcerated in jail and disbarred upon his failure to comply with said Penal Rule Absolute, and that the said statute is therefore too vague and indefinite to authorize such a penalty in that it does not provide for any trial as a condition precedent or subsequent nor state what is meant by "unless good cause is shown to the contrary"; that it is too vague and indefinite to provide a sufficiently ascertainable standard of guilt or basis for such a penalty; that it

creates a presumption that is arbitrary and operates to deny a fair opportunity to repel it, and denies Appellant, a citizen of the United States, of due process of law and of equal protection of the law guaranteed to him by Section I of the Fourteenth Amendment of the Constitution of the United States.

Jurisdiction of this court under this ground is supported by the authorities cited on pages 11 and 12 of this statement, and under Ground I above, and by *Herndon* v. *Lowry*, 301 U. S. 242.

III

The federal question presented under this assignment of error in the present appeal was raised, urged, insisted upon, and preserved in the same manner as the first Federal question (R. 9-11; 86). The substance of this exception and assignment of error is that the Supreme Court of Georgia erred in its decision of May 12, 1953, in affirming the judgment of Superior Court Judge Moore of February 6, 1953, overruling Appellant's Motion to Set Aside the Penal Money Rule Absolute as Void, and in thereby depriving Appellant, a citizen of the United States, of his property to the extent of the amount of the Rule Absolute, and of his liberty by subjecting him to imprisonment as in contempt of court unless he pays the same and also to disbarment and the deprivation of his right to practice and enjoy his profession as a lawyer and to earn his living thereby, if he fails to submit to said confiscation of his property; all without due process of law and without equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution by depriving him of the benefit of his sworn answer denying the charges made against him in said Motion for the Penal Rule, the portions of said answer admitted by Appellee in his Traverse of said Answer, the benefit of the contract between him and

THROUGH POOR COPY

Appellee involved in said proceeding, the benefit of the legal presumption of innocence of the crimes charged against him until proven guilty beyond reasonable doubt by legal evidence, the benefit of his counsel to defend him in said proceeding, the right to a list of the witnesses on whose testimony the charges against him are founded, the right to compulsory process to obtain the testimony of his own witnesses, the right to be confronted with the witnesses against him, the right to present evidence in his own behalf (including the depositions already taken supporting his defense), the right to a public and speedy trial by an impartial jury, and the benefit of all the applicable and controlling principles of law and trial and appellate procedure granted by the State of Georgia to other persons in its jurisdiction in like circumstances and similar situations. Said Section I of the Fourteenth Amendment of the U. S. Constitution is quoted under the third assignment of error.

The provisions of the Constitution of Georgia referred to in said assignment of error are set forth in Appellant's said Motion to Set Aside the Judgment (R 11-14).

A mere statement of the foregoing ground shows this Honorable Court has jurisdiction, as well expressed in the following brief language of Mr. Chief Justice White in *Riverside & Dan River Cotton Mills, Inc.* v. *Menefee*, 237 U. S. 189, 35 S. Ct. 579:

> "That to condemn without a hearing is repugnant to the due process clause of the 14th Amendment needs nothing but statement."

Jurisdiction of this court under this ground is supported by the authorities cited under Ground I above, and on pages 11 and 12.

IV

The Federal question presented in the fourth assignment of error in this appeal was raised, urged, insisted upon, and preserved in the same manner as the first Federal question (R. 84-86). The substance of said exception and assignment is that the Supreme Court of Georgia erred in its decision of May 12, 1953, in affirming the judgment of Superior Court Judge Moore of February 6, 1953, overruling Appellant's Motion to Set Aside as Void said Penal Rule Absolute, after going behind the same and allowing evidence presented by Appellant on said Motion, because the said evidence showed positively and without contradiction that Appellant had paid Appellee immediately upon collection the exact and specified amount ($1,591.33) due him under the contract of settlement and as admitted by Appellee in his own deposition (which Appellant introduced on said hearing before Judge Moore); that all of the charges made against Appellant in said Penal Money Rule proceeding are untrue; that Appellant was not (and had not been) in contempt of court; and that there was no basis whatever for the Penal Money Rule or the Penal Rule Absolute. (Even if the allegations of Appellee's Motion for Penal Money Rule could be accepted as true, they would at most make out a civil and not a Penal case against Appellant.) That the decision of the Supreme Court of Georgia in affirming Judge Moore's ruling under said circumstances deprives Appellant, a citizen of the United States, of due process of law and of equal protection of the law in violation of Section I of the Fourteenth Amendment of the Constitution of the United States by depriving him of the application and benefit of the following privileges and immunities and principles of law granted to other

citizens of Georgia under like circumstances and in similar situations:

(a) The principle of law laid down in the cases *Holcombe* v. *Dupree*, 50 Ga. 336; *Chipman* v. *Barron*, 2 Ga. 232-6; *Prescott* v. *Bennett*, 50 Ga. 268; and *Wakefield* v. *Moore*, 64 Ga. 268, that a contempt rule against an officer of the court is not subject to the estoppel rule and does not stand in the same category as other cases, and that a rule absolute in such a case is never res adjudicata but is *always open* for the purpose of investigation upon a proper motion or case made, and that the court must necessarily, in a proper case, go behind such a rule absolute or previous adjudication and examine the full and complete truth of the case and render judgment accordingly.

(b) The principle of law requiring the setting aside of the Rule Absolute in this case and the discharge of the rule after Judge Moore properly went behind said Rule Absolute and into the merits of the case and allowed the evidence introduced by Aiken showing positively and without contradiction that Aiken had paid Richardson the exact amount ($1,591.33) due him under the contract of settlement and as admitted by Richardson in his testimony in the record, and that Aiken was not and is not in contempt of court, and that there was no basis whatever for the money rule or rule absolute.

The material evidence presented by Appellant on this point on the hearing of his Motion before Superior Court Judge Moore to Set Aside as Void the Penal Rule Absolute appears in the record at pages 87-94. No objection whatever was made to said evidence by Appellee, and he offered no evidence.

Jurisdiction of this court on this ground is supported by the authorities cited under sub-paragraph (a) above and the following additional authorities:

Norris v. *Alabama*, 295 U. S. 587, 55 S. Ct. 579;
Gallegos v. *State of Nebraska*, 342 U. S. 55, 72 S. Ct. 141.

Grounds upon Which it Is Contended the Federal Questions Thus Involved Are Substantial

The Federal Constitutional Questions involved in this appeal are substantial for the reasons so clearly shown on pages 15 through 18 of this Statement and for the reasons so obvious from the Summary of the Assignments of Error in this Statement.

Assignments of Error I and II present the very substantial Federal Constitutional Questions for review on appeal by this Court that the decision of the Supreme Court of Georgia affirming the judgment of Judge Virlyn B. Moore of Fulton County Superior Court overruling Appellant's Motion to Set Aside as Void the Penal Rule Absolute entered against him by Superior Court Judge E. E. Andrews (without a Trial and Without any Evidence) for $2,189.38 and twenty per cent penalty per annum thereon from May 23, 1949, until paid, is necessarily in favor of the validity of the Georgia Statutes identified as Georgia Code Sections 24-210 and 24-206 attacked by Appellant as repugnant to and violative of Section I of the Fourteenth Amendment of the U. S. Constitution in the particulars specified in Assignments of Error I and II, and thereby deprives Appellant of his property and liberty in the particulars there specified.

For the first time in American History, a United States citizen (Appellant) stands convicted, sentenced, penalized, and punished as a forger, an embezzler, a cheat, a swindler, a perjurer, a false swearer, and a solicitor of legal business, by the "arbitrary edict" (*Hovey* v. *Elliott, supra*) in the form of a Penal Rule Absolute of one man, Judge E. E. Andrews, of Fulton County, Georgia, Superior Court, without a trial, without any evidence, and without any law whatever to support it; the Motion to Set Aside the same being denied by Superior Court Judge Virlyn B. Moore

and affirmed by six of the seven Justices of the Supreme Court of Georgia in the decision appealed from.

Unless this honorable Court notes jurisdiction of this appeal and reverses the decision of the Supreme Court of Georgia affirming Judge Moore's judgment overruling Appellant's Motion to Set Aside said Penal Rule Absolute rendered under said circumstances, Appellant will be deprived of his most priceless possession—a good name and reputation acquired by a lifetime of honorable living. (A good name is rather to be chosen than great riches . . . Proverbs 22:1.) See in this connection *Abbott* v. *National Bank of Commerce of Tacoma, Wash.*, 175 U. S. 409, 20 S. Ct. 153. It will deprive him of his profession and of his only means of a livelihood, to which he has devoted 33 years of his life without a blemish, and of his liberty by imprisonment if he fails (or is unable) to comply with said "Arbitrary Edict."

Even if Appellant were willing to accept the conviction of and sentence for the serious criminal charges made against him in said Penal proceeding, in the form of said Penal Rule Absolute rendered without a trial and without any evidence, and to pay the thousands of dollars arbitrarily required thereby, it could still be used as a basis for his disbarment and the deprivation of his only means of livelihood and also his imprisonment, as the decision of the Supreme Court of Georgia affirming said "Penal Rule Absolute" states that it is "Res Adjudicata," despite the decision of the U. S. Supreme Court in *Hovey* v. *Elliott*, 167 U. S. 409, that such a judgment rendered under such circumstances is void for want of jurisdiction and constitutes a denial of due process of law guaranteed by the Fourteenth Amendment of the U. S. Constitution, and the prior uniform decisions of the Supreme Court of Georgia to the same general effect.

The Georgia Statutes (Georgia Code Sections 24-210 and

24-206) under which this "arbitrary edict" was issued have been properly and timely attacked by Appellant as repugnant to the Fourteenth Amendment of the U. S. Constitution, and the decision of the Supreme Court of Georgia is necessarily in favor of their validity, thereby giving the Supreme Court of the United States jurisdiction beyond question of this appeal on the substantial Federal Constitutional questions involved in a matter of grave and public concern.

As shown by this Statement, the Assignments of Error, and the Record, the said Georgia Statutes, as construed and applied to Appellant, place all of his property (including his good name and reputation and his profession and only means of livelihood) and his liberty subject to the arbitrary will of Judge E. E. Andrews of Fulton County Superior Court.

There is nothing in all the annals of American Jurisprudence comparable to such an "arbitrary edict." The most shocking tragedy is that it was rendered in Georgia, U. S. A., and not in Georgia, U. S. S. R.; that it was rendered by a State Judge of the U. S. A. to a loyal and law-abiding U. S. citizen, and not by a Commissar in Russia to some enslaved serf or communist, and that another Judge (Moore) of Fulton County Superior Court overruled a Motion to Set it Aside and he was affirmed by six of the seven Justices of the Supreme Court of Georgia, U. S. A.

The third substantial Federal question presented by this appeal is that the Penal Rule Absolute entered against Appellant, without a trial and without any evidence, deprives him, a citizen of the United States, of his property to the extent of the $2,189.38 principal, twenty per cent penalty per annum thereon from May 23, 1949, until paid, and all costs, and deprives him of his liberty by subjecting him to being incarcerated in jail under alleged contempt of court unless he complies with said Void Penal Rule Abso-

THROUGH POOR COPY

lute, without due process of law and without equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution by depriving him of his privileges and immunities as a citizen of the United States in the form of the benefits and principles of law applicable to and controlling his case and which have been granted by the State of Georgia to other persons in like circumstances and similar situations in this jurisdiction, as set forth in detail in paragraphs 14, 15, and 16 of his Motion to Set Aside said Judgment (R. 9-14).

The fourth substantial Federal question presented in this appeal is set forth in Assignment of Error IV. It is that the Supreme Court of Georgia deprived Appellant of due process of law and of equal protection of the law in affirming Judge Moore of Fulton County Superior Court in overruling Appellant's Motion to Set Aside as Void the Penal Rule Absolute (Rendered Without a Trial and Without Any Evidence), after going behind the same and allowing evidence presented by Appellant on said Motion, because the said evidence showed positively and without contradiction that Appellant had paid Appellee immediately upon collection the exact and specified amount ($1,591.33) due him under the contract of settlement (R. 87-94; 23), and as admitted by Appellee in his own deposition (R. 92-3), which Appellant introduced on the hearing of said Motion before Judge Moore; that all of the charges made against Appellant in said Penal, Contempt, and Money Rule proceeding are untrue; that Appellant was not (and had not been) in contempt of court; and that there was no basis whatever for the said Penal Rule or Penal Rule Absolute (R. 87-94; 23). Judge Moore followed the law of Georgia in going behind said Penal Rule Absolute and receiving said evidence, but refused to follow the law in refusing to render judgment according to said uncontradicted evidence (by refusing to set aside as void said judgment and to discharge

said Rule) as required by said law. *Holcombe* v. *Dupree*, 50 Ga. 336; *Chipman* v. *Barron*, 2 Ga. 232; *Prescott* v. *Bennett*, 50 Ga. 268; and *Wakefield* v. *Moore*, 65 Ga. 268. The Supreme Court of Georgia did not consider or follow or even refer to said evidence and claimed the Penal Rule Absolute Rendered Without a Trial and Without Any Evidence was res adjudicata This is in direct conflict with the Georgia Law (as shown by the above stated prior uniform decisions of the Georgia Supreme Court) which has been applied by the Supreme Court of Georgia to others in like circumstances and similar situations, and Appellant assigned error on the Federal Constitutional ground that he was thereby deprived of due process of law and of equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution. Appellant was thus deprived of the same substantial and priceless Federal Constitutional rights, privileges, and immunities described above with reference to the arbitrary action of Judge E. E. Andrews of Fulton Superior Court in striking Appellant's answer in the Penal and Contempt Money Rule proceeding and entering a Penal Money Rule Absolute Against him, Without a Trial and Without Any Evidence.

The Appellee introduced no evidence whatever on the hearing of Appellant's said Motion to Set Aside said Penal Rule Absolute and made no objection to the evidence presented by Appellant. Appellee has never presented any evidence in support of said Penal Judgment against Appellant. Evidence would be worthless if it could be arbitrarily disregarded by either court or jury. See in this connection *Mitchum* v. *State*, 11 Ga. at page 633; *Haverty Furn. Co.* v. *Calhoun*, 15 Ga. App. 620, 84 S. E. 138; *McCullough* v. *State*, 11 Ga. App. 612, 76 S. E. 393. The following authorities strongly support this substantial Federal ground and the jurisdiction of the U. S. Supreme Court thereon: *Norris* v. *Alabama*, 294 U. S. 587; *Avery* v. *State of Georgia*, 345

U. S. 559, 73 S. Ct. 891; *North Carolina R. Co.* v. *Zachary*, 232 U. S. 248, 34 S. Ct. 305; *Lawrence et al.* v. *State Tax Comn. of Miss.*, 286 U. S. 276, 52 S. Ct. 556; *Niemotko* v. *State of Maryland*, 340 U. S. 268, 71 S. Ct. 325; *Hague, Mayor et al.* v. *C. I. O.*, 307 U. S. 496, 59 S. Ct. 954; *Urie* v. *Thompson*, 337 U. S. 163; *Moody and Wife* v. *Davis*, 10 Ga. 411-13.

Such a decision as that appealed from in this case has been termed by the U. S. Supreme Court in *Hovey* v. *Elliott*, 167 U. S. 409, as "A Blot Upon Our Jurisprudence and Civilization."

In the language of this Court in *U. S.* v. *Lee*, 106 U. S. 196, 1 S. Ct. 261,

> "If such be the law of this country, it sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other government which has a just claim to well-regulated liberty and the protection of personal rights."

The Federal Questions Properly and Timely Raised in This Case, as Shown by the Foregoing Statement, as Well as the Uncontradicted Record, Are Therefore Very Substantial in Nature and of Grave and Public Concern in the Particulars Set Forth Briefly Above. The Decision of the Supreme Court of Georgia Appealed From Strikes at the Most Elementary and Fundamental Provisions of Our Federal Constitutional Bill of Rights. (*Hovey* v. *Elliott, Supra.*) It Would Also Utterly Destroy "Free Counsel," so "Indispensable to a Fair and Full Administration of Justice." *Mitchum* v. *State of Georgia*, 11 Ga. 633.

If the "Government of the United States is a government of laws and not of men" as stated by the U. S. Supreme Court in *U. S.* v. *Dixon*, 40 U. S. 141, it is essential that jurisdiction be noted in this case.

Conclusion

In the interest of brevity, Appellant incorporates by reference in this Statement as to Jurisdiction his Appeal, Statement, Assignments of Error, and Prayer for Reversal.

It is submitted that the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the Rules of this Court for the reasons set forth above.

G. Seals Aiken,
In Propria Persona.

Ben F. Sweet,
F. L. Breen,
Of Counsel.

APPENDIX "A"

OPINION OF THE SUPREME COURT OF GEORGIA—MAY 12TH, 1953

No. 18185

ALMAND, *Justice:*

William Richardson, hereinafter referred to as the movant, on May 27, 1949, filed in Fulton Superior Court a money rule against G. Seals Aiken, an attorney at law hereinafter referred to as the respondent. The respondent filed demurrers and a response. An order overruling general demurrers to the rule was affirmed by the Court of Appeals, 80 Ga. App. 591 (56 S. E. 2nd 762). The respondent's application for the writ of certiorari to this court was denied 80 Ga. App. 889. Upon a hearing on certain demurrers and motions, the trial court struck the respondent's answer and entered a Rule Absolute ordering the respondent to pay the movant a specified sum of money, whereupon the respondent filed a bill of exceptions to this court assigning error upon certain interlocutory rulings and on the final judgment, contending that various orders and the final judgment were illegal and void upon many grounds. This court, for want of jurisdiction, transferred the case to the Court of Appeals, 207 Ga. 735 (64 S. E. 2nd 54). The Court of Appeals then affirmed the judgment of the trial court. 85 Ga. App. 180 (68 S. E. 2nd 228). The respondent's petitions for the writ of certiorari to this court and for an appeal to the U. S. Supreme Court were denied. 85 Ga. App. 912; U. S. , 73 S. Ct. 15, L.Ed. .

Before the remittitur of the Court of Appeals was made the judgment of the trial court, the respondent filed a motion to set aside the judgment, contending that the judgment was erroneous, illegal and void for many reasons, one of them being that Code Sec. 24-206 was void because violating Sections 57-101 and 57-112 and "deprives (respondent) of due process and equal protection of the law guaranteed to him by Section 1 of the Fourteenth Amendment." On the hearing of this motion, the trial court permitted the respondent to introduce evidence by way of affidavits, depositions, and documents, all of which related to facts and

matters occurring before the rule was made absolute. The Court overruled the motion to set aside the rule absolute and the exception here is to that order. The assignments of error made in the bill of exceptions, except the contention that Code Sec. 24-206 is invalid, are the same as were urged and passed upon by the Court of Appeals in 85 Ga. App. 180, supra.

HELD:

1. A final judgment between the parties is conclusive as to all issues and matters that actually were or could have been dealt with and put in issue. Code Sec. 110-501. A judgment will not be set aside to let in defenses which were or could have been interposed before judgment was rendered. Hurt Building, Inc., v. Atlanta Trust Co., 181 Ga. 274(1) 283-4 (182 S. E. 187); Evans v. Dennis, 203 Ga. 232, 46 S. E. 2nd 122). So, where a rule absolute was obtained at one term of court against a sheriff, he could not answer at the next term an attachment nisi and put in issue the same grounds that were decided against him before the rule was made absolute. Mize v. Blalock, 71 Ga 861(2).

2. Where a judgment is rendered against a party and he attacks the same by a direct bill of exceptions to the Court of Appeals on the ground that it is erroneous, illegal, and void, and such judgment is affirmed, it becomes final and such party cannot have it set aside upon grounds that were or could have been urged upon the appeal. The judgment is res adjudicata as to such matters. Leathers v. Leathers, 138 Ga. 740 (76 S. E. 44); Hubbard v. Whatley, 200 Ga. 751(2) (38 S. E. 2nd 738). "After a remedial proceeding for contempt has been received and affirmed by the Supreme Court, as to the imprisonment ordered, and as to the terms prescribed in the order for avoiding imprisonment, the terms will not, before the imprisonment has commenced, be changed because the party is unable to comply, unless he has become unable since the order was passed. Defenses or excuses, which were or might have been presented before, are res ajudicata." Thewatt vs. Kiddo, 58 Ga. 300(1). See Gray v. Conyers, 70 Ga. 349;

Mize v. Blalock, 71 Ga. 861, supra; Ryan v. Kingsberry, 89 Ga. 228 (15 S. E. 302).

3. Where, as in the instant case, the respondent seeks to set aside a rule absolute on grounds which were urged or could have been urged on the trial and in the appeal therefrom, the judgment of the trial court refusing to set aside the rule absolute will not be disturbed.

4. Though this court has jurisdiction of the writ of error because of the attack on the constitutionality of Code Sec. 24-206, it does not follow that this question must necessarily be decided, it being well settled that such question will not be passed upon if there is any other ground in the case upon which this court can properly rest the decision. Burns v. State, 191 Ga. 60, 62 (11 S. E. 2nd 350). The respondent could have made an attack on the validity of this section in the trial court and on the appeal therefrom, and failing to do so, he can not now be heard to complain.

5. There was no error in overruling the motion to set aside the rule absolute.

Judgment affirmed. All justices concur except Atkinson, P. J., not participating.

BLEED THROUGH POOR COPY

LE COPY

Office - Supreme Court
FILED
SEP 14 195
HAROLD B. WILLEY,

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 343

G. SEALS AIKEN,

Appellant,

vs.

WILLIAM RICHARDSON

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS

RALPH WILLIAMS,
Counsel for Appellee.

JONES, WILLIAMS, DORSEY, and KANE,
Of Counsel.

INDEX

Subject Index

	Page
Statement opposing jurisdiction	1
Motion to dismiss appeal from Supreme Court of Georgia	7

Table of Cases Cited

Aiken v. *Richardson*, 80 Ga. App. 591, 56 S. E. 2d 782, 85 Ga. App. 180, 68 S. E. 288, 73 Sup. Ct. 15, 344 U. S. 802, 73 Sup. Ct. 282, 209 Ga. 837, 76 S. E. 2d 393	2, 3, 4
Missouri, Kansas and Texas Railway Company v. *Sealy*, 248 U. S. 363, 63 L. ed. 296	4

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 343

G. SEALS AIKEN,

Appellant,

vs.

WILLIAM RICHARDSON

STATEMENT OPPOSING JURISDICTION

This Honorable Court should not take jurisdiction, but should dismiss this appeal for the reason that the Supreme Court of Georgia has held that the Federal questions now urged as the basis for jurisdiction in this appeal were, or could have been, raised in the trial court and on the original appeal from the rule absolute entered against the Appellant, and that, under State practice these issues are now res adjudicata. For this reason the Federal questions urged were not considered in the Supreme Court of Georgia and cannot be made the basis for an appeal to this Court. The essential facts in the case are as follows:

Aiken was attorney for Richardson and as such collected $3,425 for him in May, 1949. Richardson instructed Aiken to deduct his one-third attorney's fee and out-of-pocket

expenses and to remit the balance with a statement of the expenses deducted. Aiken mailed Richardson a check for $1,591.33 marked "Payment in Full", without any explanation of the deductions made. Richardson refused to accept this check, which he returned to Aiken, and after Aiken declined to account, Richardson filed a money rule against him in May, 1949.

Aiken filed numerous demurrers and an answer. His general demurrer was heard and overruled and he filed exceptions to the Court of Appeals of Georgia. The Court of Appeals of Georgia affirmed the trial court in an opinion which appears in 80 Ga. App. 591, 56 S. E. 2d 782. Aiken made a motion for a rehearing, which was denied. He then filed a petition for certiorari to the Supreme Court of Georgia, which was denied. He made a motion for a rehearing in the Supreme Court of Georgia and this was overruled. The case was then heard in the trial court on Richardson's demurrers to Aiken's answer, and certain grounds of the demurrer were sustained, one of them being that the answer was vague, indefinite, uncertain, evasive and self-contradictory. Aiken was given ten days to amend, but he refused to do so. Richardson then moved to strike his answer and this was done in trial court by order dated November 17, 1950. Richardson then moved the court to enter a rule absolute against Aiken and after argument of counsel this was done on the same date.

Aiken then filed exceptions to the Supreme Court of Georgia, which were transferred to the Court of Appeals of Georgia. The Court of Appeals, after argument, affirmed the judgment of the trial court in an opinion which appears in 85 Ga. App. 180, 68 S. E. 2d 288. Aiken made a motion for a rehearing which was overruled. He then filed a petition for certiorari with the Supreme Court of Georgia and this petition was denied. He filed a motion for a rehearing and it was overruled.

BLEED THROUGH POOR COPY

Aiken then filed an appeal to the Supreme Court of the United States and printed briefs were submitted by both parties. This appeal was denied for want of a substantial Federal question. 344 U. S. 802, 73 S. Ct. 15. Aiken made a motion for a rehearing and this was overruled (73 S. Ct. 282). In due course, the remittitur was received from the Court of Appeals of Georgia and made the judgment of the trial court in January, 1953. This was a little less than four years after the money was collected and the money rule filed.

A few days after the remittitur from the Court of Appeapls had been received by the trial court Aiken filed a motion to set aside the rule absolute which had been entered against him on November 17, 1950. He set out in this motion numerous grounds, all of which could have been and, so far as we can determine, actually were, raised, considered and adjudicated on the two previous appeals of this case.

This motion was heard in the trial court in February, 1953, and in the course of his argument in support of this motion Aiken presented to the court numerous affidavits, depositions and letters. From none of these documents did it appear that Aiken had any legitimate expenses chargeable to Richardson for which he had not been given credit, nor did it appear that Aiken had ever paid or offered to pay Richardson any part of the $3,425 which he had collected in May, 1949, except for the conditional tender of $1,591.33 which was made without explanation in full settlement, and was for that reason refused.

At the conclusion of Aiken's argument, the Court, without inviting the presentation of evidence by Richardson, announced that it did not think the motion should be granted and on February 6, 1953, the Court entered an order overruling the motion on every ground. Aiken then filed an appeal to the Supreme Court of Georgia and on

May 12, 1953, the Supreme Court affirmed the judgment of the trial court in a unanimous opinion which appears in 209 Ga. 837, 76 S. E. 2d 393.

In this opinion, Justice Almand, speaking for the Court, held in Headnote 4 as follows:

> "Though this Court has jurisdiction of the writ of error because of the attack on the constitutionality of Code Section 24-206, it does not follow that this question must necessarily be decided, it being well settled that such question will not be passed upon if there is any other ground in the case upon which this Court can properly rest the decision. Burns v. State, 191 Ga. 60, 62 (11 S.E. 2d 350). The respondent could have made an attack on the validity of this section in the trial court and on the appeal therefrom, and failing to do so, he cannot now be heard to complain."

From this it is apparent that the court of last resort of the State of Georgia has held that the questions upon which the Appellant seeks to predicate this appeal are now res adjudicata. For that reason they were not considered by the Supreme Court of Georgia and they cannot now be made the basis for an appeal to this Court, as was held in the case of *Missouri, Kansas and Texas Railway Company* v. *John Sealy, et al.*, 248 U. S. 363, 63 Law Ed. 296, in Headnote 1, as follows:

From this it is apparent that the court of last resort of Georgia has held that the questions upon which the Appellant seeks to predicate this appeal are now res adjudicata. For that reason they were not considered by the Supreme Court of Georgia and they cannot now be made the basis for an appeal to this Court, as was held in the case of *Missouri, Kansas and Texas Railway Company* v. *John Sealy, et al.*, 248 U. S. 363, 63 Law Ed. 296, in Headnote 1, as follows:

> "A Federal question which the highest State court apparently as a matter of State practice, declared came

BLEED THROUGH POOR COPY

too late to be considered, was not seasonably raised so as to afford the basis for a writ of error from the Federal Supreme Court to a State Court."

We therefore respectfully submit that since the Supreme Court of the State of Georgia has held that the contentions made by the Appellant have been concluded by the final judgment in the original case and cannot now be urged by him, these contentions cannot now be made the basis of an appeal to this Court and the appeal should be dismissed. We further submit that the purpose and effect of this appeal is to delay proceedings on the judgment of the lower court and payment of the money collected by the Appellant as attorney for the Appellee in May, 1949.

Respectfully submitted,

RALPH WILLIAMS,
Counsel for Appellee.

JONES, WILLIAMS, DORSEY & KANE,
Of Counsel.

BLEED: THROUGH POOR COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 343

G. SEALS AIKEN,

Appellant,

v.

WILLIAM RICHARDSON.

Motion to Dismiss Appeal from Supreme Court of Georgia

Now Comes, William Richardson, Appellee, and moves this Honorable Court to dismiss the appeal in the above stated case for the reason that no Federal question is presented, the Supreme Court of the State of Georgia having held as a matter of State practice that the Federal question upon which the Appellant seeks to rely was not seasonably raised and is now res adjudicata and came too late to be considered by that Court and therefore too late to afford a basis for appeal to this Court.

RALPH WILLIAMS,
Counsel for Appellee.

JONES, WILLIAMS, DORSEY & KANE,
Of Counsel.

Office - Supreme Court
FILED
SEP 17 195
HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 343

G. SEALS AIKEN,
Appellant,

vs.

WILLIAM RICHARDSON,
Appellee

BRIEF IN OPPOSITION TO MOTION TO DISMISS

G. SEALS AIKEN,
1106 First Nat'l Bank Bldg.
Atlanta, Ga.
In Propria Persona

Of Counsel:
BEN F. SWEET,
1114 Hurt Building
Atlanta, Ga.

F. L. BREEN,
5 Ivy Street Bldg.
Atlanta, Ga.

INDEX

SUBJECT INDEX

Brief in Opposition to Motion to Dismiss 1-8
Reply to Statement Against Jurisdiction.....8-15
Conclusion 15-17

TABLE OF CASES CITED

Aiken v. Richardson, 85 Ga. App. 180, 68 S. E. 2nd 228...11
Breen v. Phillips et al., 169 Ga. 13, 149 S. E. 565 3
Burns v. State, 191 Ga. 60, 11 S. E. 2nd 350 13
Chipman v. Barron, 2 Ga. at p. 230 .....3, 5, 15
Cooke v. U. S., 267 U. S. 517, 45 S. Ct. 390 .....3, 12
Crumb v. State, 205 Ga. 547, 54 S. E. 2nd 639 5
Davis, Director General of Railroads v. Wechsler, 263 U. S. 22, 44 S. Ct. 13 2
Davis v. Dempsey, 15 Ga. at p. 184 5
Felton v. Smith, et al., 52 Ga. App. 436, 183 S. E. 634..3, 12
Franklin v. Crowe, 128 Ga. 458, 57 S. E. 784 .....4, 15
Haygood v. Haden, 119 Ga. 463, 46 S. E. 625 3
Herndon v. State of Georgia, 295 U. S. 441, 55 S. Ct. 799..2
Holcombe v. Dupree, 50 Ga. 336 .....5, 15
Hovey v. Elliott, 167 U. S. 409, 17 S. Ct. 841 .....3, 5, 7, 12, 13, 14, 15
Jones v. Jones, 181 Ga. 747, 184 S. E. 270 .....4, 15
Manley v. State of Georgia, 279 U. S. 1, 49 S. Ct. 30 12
Missouri, Kansas, and Texas Railway Company v. John Sealy, et al., 248 U. S. 363 .....7, 13, 14

Oliver, In Re: 333 U. S. 257, 68 S. Ct. 499 .....3, 12

Prescott v. Bennett, 50 Ga. 268 .....4, 12, 15

Rogers, Dan, v. State of Alabama, 192 U. S. 226, 24 S. Ct. 257 2

Scott v. Sala, 54 Ga. App. 803, 189 S. E. 431 12

Texas v. White, 10 Wall. 483 .....3, 12

Towns v. Springer, 9 Ga. 130 .....4, 15

U. S. v. Walker, 109 U. S. 258, 3 S. Ct. 282 .....4, 12, 15

Wakefield v. Moore, 65 Ga. 269 .....5, 15

White v. George, Marshal, et al., 195 Ga. 465, 24 S. E. 2nd 787 3

STATUTES AND AUTHORITIES CITED

Constitution of Georgia, Article VI, Section II, Paragraph IV 12

Constitution of United States, Section I of Fourteenth Amendment 2, 3, 5, 7, 13, 14, 15

Georgia Code Section 2-3704 12

Georgia Code Sections 24-210 and 24-206 .....2, 4

Georgia Code Sections 26-1801 and 26-1802 11

Georgia Code Section 110-501 15

Georgia Code Sections 110-701, 110-702, and 110-709 ..... 2, 4, 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. .....

G. SEALS AIKEN,
Appellant,

vs.

WILLIAM RICHARDSON,
Appellee

BRIEF IN OPPOSITION TO MOTION TO DISMISS

Appellee contends in his Motion to Dismiss Appellant's appeal that, "No Federal question is presented, the Supreme Court of the State of Georgia having held as a matter of State practice that the Federal question upon which the Appellant seeks to rely was not seasonably raised and is now Res Adjudicata and came too late to be considered by that court and therefore too late to afford a basis for appeal to this court."

There is no merit whatever in said Motion for the following reasons:

1. The power does not lie in a State Court to put the U. S. Constitution out of this case and by an alleged rule of practice to restrict the jurisdiction of this court in the determination of the Federal constitutional questions raised by Appellant. See the dissenting opinion of Mr. Justice Cardozo, Mr. Justice Brandeis, and Mr. Justice Stone in

Herndon v. *State of Georgia*, 295 U. S. 441, 55 S. Ct. at page 799; *Dan Rogers* v. *State of Alabama*, 192 U. S. 226, 24 S. Ct. 257; *Davis, Director General of Railroads* v. *Wechsler*, 263 U. S. 22, 44 S. Ct. 13.

2. There is no rule of practice in Georgia under which it can be held that "the Federal question upon which Appellant seeks to rely was not seasonably raised and is now res adjudicata and came too late to be considered by that court and therefore too late to afford a basis for appeal to this court."

3. The Federal questions presented by this appeal were properly and timely raised in the manner expressly provided for in Georgia Code Sections 110-701, 110-702, and 110-709, by Motion to Set Aside as Void (for "defect not amendable which appears on the face of the record or pleadings" and for want of jurisdiction) the Penal Rule Absolute entered by State Superior Court Judge Andrews against Appellant without a trial and without any evidence.

4. The Chief Justice of the Supreme Court of Georgia in his order allowing this appeal expressly states in part as follows:

> "It appearing that the Appellant in his Motion to Set Aside the Penal Rule Absolute as Void, in his Bill of Exceptions to the Supreme Court of Georgia, in his Motion for Rehearing, and in his Motion for Reconsideration in said court, duly attacked the validity of the Georgia Statutes identified as Georgia Code Sections 24-210 and 24-206 under which his answer was stricken and the said Penal Rule Absolute was entered against him, on the grounds that, as construed and applied by the Supreme Court of Georgia to the pleadings in this case and the acts and activities of Appellant, they violate the due process clause of the Fourteenth Amendment of the U. S. Constitution in the particulars specified in the above stated papers pre-

sented by him and in his appeal and Assignments of Error and Statement as to Jurisdiction to the Supreme Court of the United States in this case, under the circumstances shown; and that the decision of the Supreme Court of Georgia appealed from is in favor of the validity of the said Georgia Statutes attacked by Appellant as repugnant to the Fourteenth Amendment of the U. S. Constitution;

* * * * * * *

"It appearing that the Federal questions presented by Appellant's appeal were properly and timely raised, that they are substantial in nature and of grave and public concern, and that they are subject to review by the U. S. Supreme Court by appeal under the express provisions of the U. S. Code Annotated, Title 28, Section 1257."

5. The right to enforce payment of money by Rule is *penal* in its nature, *and must be strictly construed. Texas* v. *White,* 10 Wall. 483; *Haygood* v. *Haden,* 119 Ga. 463, 46 S. E. 625; *Breen* v. *Phillips et al.,* 169 Ga. 13, 149 S. E. 565; *Felton* v. *Smith et al.,* 52 Ga. App. 436, 183 S. E. 634; *Chipman* v. *Barron,* 2 Ga. at p. 230.

6. The U. S. Supreme Court has held that a judgment rendered in a Penal and Contempt Money Rule case (such as this) without a trial and without any evidence, is void for want of jurisdiction in the court to render it, that it constitutes a denial of due process of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, and that it is not entitled to any respect at any time in any judicial tribunal. *Hovey* v. *Elliott,* 167 U. S. 409, 17 S. Ct. 841; *Cooke* v. *U. S.,* 267 U. S. 517, 45 S. Ct. 390; *In Re: Oliver,* 333 U. S. 257, 68 S. Ct. 499; *Texas* v. *White,* 10 Wall. 483. The Supreme Court of Georgia in *White* v. *George, Marshal,* et al., 195 Ga. 465, 24 S. E. 2nd 787, also recently held that, "All the authorities agree that a hearing

BLEED THROUGH POOR COPY

must be accorded to one charged with a constructive contempt" (such as the alleged contempt in this case), and quoted the very language relied upon by Appellant from the decision of this court in *Windsor* v. *McVeigh*, 93 U. S. 274, which was quoted in *Hovey* v. *Elliott*, supra, as follows:

> "A sentence of a court pronounced against a party without hearing him or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal."

7. The Supreme Court of Georgia in *Prescott* v. *Bennett*, 50 Ga. 268, set aside a judgment four years old as void for want of jurisdiction in the court to render it because it was rendered on a ground wholly unknown to the law (as in this case), and held that such a judgment was a mere usurpation of power by the court, that it could not stand any more than a house without a foundation, and that it could be set aside as a nullity collaterally under the several provisions of the Georgia Code in relation to setting aside judgments (now Georgia Code Sections 110-701, 110-702, and 110-709) whether excepted to or not, and that the said Code Sections were created for the very purpose of affording another remedy against such void judgments where not otherwise excepted to. See in this connection also *Franklin* v. *Crowe*, 128 Ga. 458, 57 S. E. 784; *U. S.* v. *Walker*, 3 S. Ct. 282, 109 U. S. 258; *Jones* v. *Jones*, 181 Ga. 747, 184 S. E. 270; *Towns* v. *Springer*, 9 Ga. 130.

8. The Georgia Statutes (Georgia Code Sections 24-210 and 24-206) under which the Penal Rule Absolute was entered in this case (without a trial and without any evidence) were attacked by Appellant in his Motion to Set it Aside (under Georgia Code Sections 110-701, 110-702, and 110-709), in his Bill of Exceptions to the Supreme Court of Georgia, in his Motion for Rehearing and in his Motion for Reconsideration in that court, and also in this appeal

to the U. S. Supreme Court, as repugnant to Section I of the Fourteenth Amendment of the U. S. Constitution in the particulars specified in Appellant's Statement as to Jurisdiction. This is in exact accordance with the Georgia State practice, as shown by said Code Sections and the authorities cited.

9. Inasmuch as Section I of the Fourteenth Amendment of the U. S. Constitution has been construed and applied by the U. S. Supreme Court in *Hovey* v. *Elliott*, supra, to a Penal and Contempt Money Rule (like the one at bar) and has been held to prohibit as a denial of due process of law in violation of said amendment the striking of an answer and the rendering of a decree pro confesso in such a proceeding, it is binding upon the Supreme Court of Georgia in this case and upon this Honorable Court in this appeal; and the Supreme Court of Georgia has held in the recent case of *Crumb* v. *State*, 205 Ga. 547, 54 S. E. 2nd 639, that, "A construction of a clause of the U. S. Constitution having been invoked, the interpretation given thereto by the U. S. Supreme Court becomes binding authority upon this court."

10. The Supreme Court of Georgia has emphatically and uniformly held prior to its decision in this case that a contempt rule against an officer of the court (such as this) is not subject to estoppel and does not stand in the same category as other cases, and that a Rule Absolute is never Res Adjudicata, but is *always open* for the purpose of investigation upon a proper motion or case made, and that the court must necessarily, in a proper case, go behind such a Rule Absolute or previous adjudication and examine the complete truth of the case and render judgment accordingly. *Holcombe* v. *Dupree*, 50 Ga. 339; *Wakefield* v. *Moore*, 65 Ga. 269; *Davis* v. *Dempsey*, 15 Ga. at page 184; *Chipman* v. *Barron*, 2 Ga. 233.

11. This case comes clearly within the intent and meaning of the decisions of the Supreme Court of Georgia in the paragraph next above because it appears from the affidavits and depositions forming a part of the record in this case in this court, that Aiken "is not and had not been in contempt," and the fact that he "was not in contempt when the rule absolute was passed is obvious, nay palpable" (*Chipman* v. *Barron*, 2 Ga. 233). In support of this contention, Aiken cites the following incontravertible facts affirmatively appearing in the record in this case:

(a) Receipt by Richardson from Aiken of a check for $1,591.33, prior to the institution of the Penal Money Rule Proceeding in this case, as evidenced by Richardson's own Exhibit B, being a photostatic copy of said check, attached to his Motion for the Rule (R. 23).

(b) That Richardson plainly admitted *under oath in his deposition* that he well knew and understood, *before and at the time of the settlement*, he would receive from Aiken "around $1,600.00" in full satisfaction of the amount due him. (R. 92-3.)

(c) That a Definite, Positive, Distinct, and Satisfactory Agreement had been entered into between Aiken and Richardson *prior* to the delivery of the executed releases settling the Richardson damage suits (R. 88-94), under which Richardson was to receive from Aiken $1,591.33 in full satisfaction of the amount due him.

(d) That Richardson did not question the terms of said settlement between him and Aiken until *after* Aiken had delivered the executed releases to counsel for the insurance carrier and had secured and deposited for collection the drafts received therefor (R. 88-94; 22-24), when it became impossible to cancel the settlement of the damage suits, including the terms of settlement between Aiken and Richardson.

12. State Superior Court Judge Moore properly went behind said Penal Rule Absolute and into the merits of this case and allowed the evidence specified in the next preceding paragraph and its sub-paragraphs showing Appellant was not (and is not) in contempt of court and that there was no basis whatever for the rule or rule absolute, but Judge Moore nevertheless denied Appellant's Motion to Set Aside said Penal Rule Absolute rendered without a trial and without any evidence, and the Supreme Court of Georgia affirmed this judgment. Appellant assigned error both before Judge Moore and in the Supreme Court of Georgia and in this appeal to the U. S. Supreme Court on the ground that he was thereby deprived of due process of law and of equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution in the particulars specified in his Statement as to Jurisdiction.

13. Appellee cited no case in his Motion to Dismiss Appellant's appeal, and no authority can be cited which supports said Motion. He does cite in his Statement Against Jurisdiction the case of *Missouri, Kansas, and Texas Railway Company* v. *John Sealy* et al, 248 U. S. 363. This case is not in point. It involved bills of lading in a *Civil* case and has no bearing whatever upon the case at bar. On the contrary, the case of *Hovey* v. *Elliott*, supra, (relied on by Appellant), was a *Penal* and Contempt Money Rule case like the one at bar and held that a judgment rendered in such a case without a trial and without any evidence constituted a denial of due process of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, was void for want of jurisdiction, and was not entitled to any respect in any judicial tribunal. The said decision is applicable and controlling here and demands that jurisdiction be noted.

To use the language of this court in *Hovey* v. *Elliott*,

167 U. S. 409, the principles relied upon by Appellant in this appeal as presented in his Assignments of Error and supported without contradiction by the record, express *"the most elementary conception of the judicial function."*

REPLY TO STATEMENT AGAINST JURISDICTION.

The Statement of Appellee Against Jurisdiction is incorrect and misleading in many respects. In the interest of brevity, no effort will be made in this brief to point out all of the errors in Appellee's said Statement, but special attention is invited to Appellant's Statement as to Jurisdiction and the portions of the record there cited for a correct statement of the material facts involved. It will be noted that Appellee does not cite any portion of the record to support any part of his statement. In accordance with the Rules of this Court, Appellant specified in his Praecipe only those portions of the record material to a consideration of the Federal questions raised in his appeal.

The second paragraph of Appellee's Statement is incorrect and misleading. The record shows affirmatively and without contradiction that Appellee agreed at the time his case was settled to accept $1,591.33 in full payment of the amount due him out of said settlement, and that this amount was sent to him by check dated May 20, 1949, immediately upon collection, in conformity with said agreement (R. 88-94; 22-24). Appellee also admitted in his deposition that at the time he turned over the releases to Appellant, he was told he would get "around $1,600.00" out of his case, and that he then left said executed releases with Appellant. (R. 92-3.) Appellee states Appellant "collected $3,425.00 for him in May, 1949" and that he "instructed Aiken to deduct his one-third attorney's fee and out-of-pocket expenses and to remit the balance with a statement of the expenses deducted." The record shows this demand was not made upon Appellant by Appellee until "about a week" after Appellee left the executed release in settlement of

his case with Appellant with the agreement to accept $1,591.33 in full payment of the amount due him out of the said settlement (R 22). The record also shows that Appellant rendered valuable legal services to Appellee in addition to securing said settlement for him, including the successful defense of his wife in the criminal charges preferred against her by the person with whom she had the collision, the successful prosecution of said person in her charges against him, the successful representation of Appellee with his liability insurer against the contentions of the person with whom Mrs. Richardson collided that the collision and resulting damages to him were caused by her negligence, etc. The record shows affirmatively that Appellee agreed at the time his case was settled to accept the Definite and Stated amount of $1,591.33 in full satisfaction of the amount due him out of said settlement, without the itemization of any expenses, and that Appellant agreed to accept the balance of said settlement in satisfaction of the amount due him in all of said matters handled by him for Appellee (R. 88-94).

The Appellee refers to the "numerous affidavits, depositions, and letters" submitted to Judge Moore by Appellant in February, 1953, in support of Appellant's Motion to Set Aside the Rule Absolute, and states, "From none of these documents did it appear that Aiken had any legitimate expenses chargeable to Richardson for which he had not been given credit." This statement is utterly false and entirely unsupported by any evidence whatsoever. It is in direct conflict with the evidence presented by Appellant on the hearing of his Motion to Set Aside as Void the Rule Absolute. For instance, Pages 143-A through 143-G of the Bill of Exceptions in the Supreme Court of Georgia show many hundreds of dollars in expenses paid by Appellant in representing Richardson, for which he was not reimbursed or credited, and far more than the difference between the $1,591.33 paid Richardson as agreed in the contract of

settlement, and the $2,283.33 arbitrarily demanded by Appellee about a week after the settlement had been consummated and when it was too late to rescind said settlement. Pages 143-F and -G of said Bill of Exceptions show a fee of $250.00 due Appellant by Appellee for defending the latter's wife and in prosecuting the person with whom she had the collision, in criminal court at Appellee's request. Pages 147 through 151 of said Bill of Exceptions show valuable legal services rendered by Appellant to Appellee in matters other than the claims of Appellee and his wife for damages resulting from the collision. Appellee's First Amendment shows he agreed under his own signature on October 13, 1949, that the expenses to that time were "at least $750.00 in addition to the ordinary professional expenses required in carrying on this litigation over a period of 17 months." (R. 28-33.)

The statement of Appellee, "Nor did it appear that Aiken had ever paid or offered to pay Richardson any part of the $3,425 which he had collected in May, 1949, except for the conditional tender of $1,591.33 which was made without explanation in full settlement, and was for that reason refused," is incorrect and misleading. The record shows Appellant sent Appellee a check for $1,591.33 on May 20, 1949, "in full payment and satisfaction of amount due payee out of the settlement of his case and all his claims versus W. E. Coker and West View Corporation," in exact accordance with the agreement between Appellee and Appellant for the settlement of said case and the disbursement of the funds resulting therefrom (R. 88-94; 23); that Richardson received said remittance as shown by Exhibit B attached to his Motion for the Money Rule (R. 23); that he returned it through his brother on or about May 23, 1949, with oral and written demands that he be paid $2,283.33 instead (which was $692.00 more than the amount he had agreed to accept in order to induce Aiken to settle his case) and threatened Aiken with this Penal Proceeding and 20 per

cent penalty if he did not comply with said arbitrary and lawless demands (R. 24). See in this connection Georgia Code Sections 26-1801 and -1802.

Appellee states, "At the conclusion of Aiken's argument, the Court, without inviting the presentation of evidence by Richardson, announced that it did not think the motion should be granted." This statement is incorrect and entirely outside the record. If it were permissible to go outside the record and show what Judge Moore stated at the time he overruled Appellant's Motion to Set Aside the Judgment, attention would be invited to the fact that at the conclusion of the evidence presented by Aiken, Judge Moore asked counsel for Richardson if he had anything to offer, and he stated that the only thing he had to present was the decision of the Court of Appeals in *Aiken* v. *Richardson*, 85 Ga. App. 180, 68 S. E. 2nd 228, and that Judge Moore stated in substance to Aiken from the Bench, after reading some of the evidence, that if Aiken had been permitted to present said evidence to a jury, it would no doubt have found in his favor.

Appellee states that all of the numerous grounds set out by Appellant in his Motion to Set Aside the Judgment, "could have been, and so far as we can determine, actually were, raised, considered and adjudicated on the two previous appeals of this case." This statement is incorrect. The questions raised in Appellant's Motion to Set Aside the Rule Absolute in this case, in his appeal from the denial of said Motion to the Supreme Court of Georgia, and in his appeal to this Court, have never been adjudicated. They could not have been adjudicated by the Court of Appeals in the decision referred to by Appellee because the Supreme Court of Georgia has exclusive jurisdiction to decide questions involving "the construction of the Constitution of the State of Georgia" and the Constitution "of the United States," and "in all cases in which the constitutionality

of any law of the State of Georgia or of the United States is drawn in question." Article VI, Section II, Paragraph IV of the Georgia Constitution (Georgia Code Section 2-3704). The questions raised by Aiken in the manner stated "involved the construction of the Constitution of the State of Georgia" and "of the United States," and they draw in question the constitutionality of said specified laws of the State of Georgia as being violative of said provisions of both the Georgia and the U. S. Constitutions. These questions have never been decided in this case. They could not have been decided before, and they could not have been raised before they were raised by Aiken. If they could have been raised and decided before by the Court of Appeals, a decision thereon adverse to Aiken would have been utterly void because it would have been outside the jurisdiction of said court and in direct conflict with the decisions of the U. S. Supreme Court and the Supreme Court of Georgia on the questions involved and would have been in gross violation of the provisions of the U. S. and Georgia Constitutions specified and relied upon by Aiken in his Motion to Set Aside the Judgment in the Superior Court, in his appeal to the Supreme Court of Georgia, and in his appeal to this court. *Hovey* v. *Elliott*, 167 U. S. 409, 17 S. Ct. 841; *Texas* v. *White*, 10 Wall. 483; *Felton* v. *Smith*, 52 Ga. App. 436; *Cooke* v. *U. S.*, 267 U. S. 517, 45 S. Ct. 390; *In Re: Oliver*, 333 U. S. 257; *Manley* v. *State of Georgia*, 279 U. S. 1, 49 S. Ct. 30; *Scott* v. *Sala*, 54 Ga. App. 803, 189 S. E. 431; *U. S.* v *Walker*, 3 S. Ct. 282, 109 U. S. 258; *Prescott* v. *Bennett*, 50 Ga. 268.

Appellee states in conclusion "that the purpose and effect of this appeal is to delay proceedings on the judgment of the lower court and payment of the money collected by the Appellant as attorney for the Appellee in May, 1949." This statement is false and cannot be supported by any authority or any portion of the record. Appellant has appealed to the U. S. Supreme Court in order to prevent the

confiscation of his property, to the extent of over $4,000.00 in cash at the present time and destruction of his good name and reputation, and the deprivation of his means of livelihood if he fails to submit to said confiscation and of his liberty by imprisonment if he fails to comply with the "arbitrary edict" (*Hovey* v. *Elliott*, supra) rendered against him in this case, without a trial and without any evidence, all without due process of law and without equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution. Furthermore, as to Appellee's charge that the purpose of this appeal is delay, the record in this court shows that Appellant has made a good and valid bond which has been duly approved by the Chief Justice of the Supreme Court of Georgia for the full amount of said "arbitrary edict," including the confiscatory penalty thereon of 20 per cent per annum from May 23, 1949, until complied with.

Appellee quotes paragraph 4 of the decision of the Supreme Court of Georgia in this case in which it admits jurisdiction by reason of the attack on the constitutionality of Georgia Code Section 24-206, but cites the case of *Burns* v. *State*, 191 Ga. 60, 62, 11 S. E. 2nd 350, as authority for the statement that it was not necessary to pass upon said constitutional ground, upon the theory that its decision could properly rest upon another ground. Appellee then cites the case of *Missouri, Kansas, and Texas Railway Company* v. *John Sealy, et al.*, 248 U. S. 363, in support of said holding of the Supreme Court of Georgia.

The case of *Burns* v. *State*, 191 Ga. 60, 62, 11 S. E. 2nd 350, cited by the Supreme Court of Georgia to support its said ruling, has no application to the case at bar. In that case there was a trial *by jury* and a *verdict* was returned and a *new trial* was granted. *The court there pointed out that it was not necessary to pass upon the constitutional ground raised in that case because the error assigned was*

"effectually cured and obliterated by the action of the court in granting a new trial." In the case at bar, the Rule Absolute was entered without any trial and without any evidence. Therefore, in view of the nature of the decision in *Burns* v. *State*, supra, where a new trial was granted, thereby eliminating the issue involved in the constitutional ground, it does not follow that in the absence of a new trial the constitutional question raised can be eliminated from consideration under the theory upon which *Burns* v. *State*, supra, was decided. Indeed, it is a complete non sequitur!

The case of *Missouri, Kansas, and Texas Railway Company* v. *John Scaly, et al.*, supra, cited by Appellee as the only case in support of his Motion to Dismiss Appellant's appeal and his Statement Against Jurisdiction, is not in point. It involved bills of lading in a Civil case and has no bearing whatever upon the case at bar. On the contrary, the case of *Hovey* v. *Elliott*, supra (relied on by Appellant), was a Penal and Contempt Money Rule case like the one at bar and held that a judgment rendered in such a case without a trial and without evidence constituted a denial of due process of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, was void for want of jurisdiction, and was not entitled to any respect in any judicial tribunal.

No authority can be cited by Appellee which supports his contention that the Supreme Court of Georgia did not have to decide this Federal constitutional ground, for the reason that any statute which allows the awarding of a 20 per cent penalty per annum against a respondent in a Penal Money Rule case on any amount, without a trial and without any evidence, is utterly void and unconstitutional in that it deprives the respondent of due process of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution. *Hovey* v. *Elliott*, supra.

In Paragraph 1 of its decision of May 12, 1953, the Supreme Court of Georgia cites Georgia Code Section 110-501 as authority for the statement that, "A final judgment between the parties is conclusive as to all issues and matters that actually were or could have been dealt with and put in issue." *This Code section has no reference whatever to a Rule Absolute in a Penal Money Rule proceeding.* A judgment in such a proceeding is controlled by *Holcombe* v. *Dupree*, 50 Ga. 336; *Chipman* v. *Barron*, 2 Ga. 236; and *Wakefield* v. *Moore*, 65 Ga. 268 (Penal Money Rule cases), holding that a Contempt Rule against an officer of the court is not subject to the estoppel rule and is not in the same category as other cases, but that the court must necessarily, in a proper case, go behind the previous adjudication, and examine the full and complete truth of the case and render a judgment accordingly, *and for this purpose such a contempt rule or Rule Absolute is ALWAYS OPEN;* and by *Hovey* v. *Elliott*, 167 U. S. 409, 17 S. Ct. 841, holding that a judgment rendered in such a case without a trial and without any evidence is void for want of jurisdiction in the court to render it, that it constitutes a denial of due process in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, and that it is not entitled to any respect at any time in any judicial tribunal. The following authorities are also to the same general effect: *Prescott* v. *Bennett*, 50 Ga. 268; *Franklin* v. *Crowe*, 128 Ga. 458, 57 S. E. 784; *U. S.* v. *Walker*, 3 S. Ct. 282, 109 U. S. 258; *Jones* v. *Jones*, 181 Ga. 747, 184 S. E. 270; *Towns* v. *Springer*, 9 Ga. 130; and *Georgia Code Sections* 110-701, 110-702, and 110-709.

CONCLUSION

Counsel for Appellant have carefully read all the authorities cited by the Supreme Court of Georgia and have found that not a one of them supports its decision. If they could be construed to support said decision, they could not be

followed because they would be in direct conflict with the uniform and controlling decisions of the U. S. Supreme Court on the points involved and in violation of Section I of the Fourteenth Amendment of the U. S. Constitution. In the interest of brevity, the cases cited by the Supreme Court of Georgia will not be analyzed in this brief on the question of the jurisdiction because the decisions cited by Appellant show so clearly and positively that this court has jurisdiction of this appeal. Furthermore, this Court will readily observe from a mere reading of Appellant's Statement as to Jurisdiction, without considering any of the authorities cited, that it has jurisdiction.

The record shows that Appellant has been a reputable member of the Georgia Bar for over 33 years and of the Bar of this Court since November 25, 1935. He has been a member in good standing of the American, Georgia, and Atlanta Bar Associations, and the Lawyers Club of Atlanta for many years.

As a matter of record, Judge Townsend in his special concurrence in the decision of the Court of Appeals of Georgia (*Aiken* v. *Richardson*, 85 Ga. App. 180) called attention to the attacks levied against the professional integrity of Appellant in the pleadings of Appellee and in the briefs of his counsel in this Penal Proceeding in both the Superior and Appellate Courts of Georgia, and stated that in justice to Appellant, he, Judge Townsend, desired to make it clear that said attacks made upon the character of Appellant were unwarranted, and this statement was made without the evidence showing the falsity of said charges, produced by Appellant on the hearing of his later Motion to Set Aside said Void Judgment. Judge Townsend further stated in his said opinion that if the order of Judge Andrews sustaining Appellee's Motion to Strike Appellant's Answer on the ground it was evasive had been the subject of review, it was his "personal opinion" that it would have been the

duty of that court to find that Judge Andrews had abused his discretion in holding the answer so evasive as to require its dismissal.

Appellant, nevertheless, stands before this Honorable Court (of which he has been a member for about eighteen years) condemned, convicted, and sentenced as a criminal, without a trial and without any evidence, and contrary to the positive, uncontradicted and overwhelming evidence allowed, but not followed as required by law, on his Motion to Set Aside the "arbitrary edict" rendered against him in this case. Such a travesty upon justice and gross violation of the Fourteenth Amendment of the U. S. Constitution demand the affirmative action of this Court by noting jurisdiction and reversing said "arbitrary edict." This Honorable Court undoubtedly has the constitutional power, right, and duty to note jurisdiction of this appeal and, after argument, to set aside said "arbitrary edict" as void for want of jurisdiction and as a denial of due process of law in violation of Section I of the Fourteenth Amendment in accordance with its prior applicable and controlling decision in Hovey *v.* Elliott, *supra.*

Respectfully submitted,

G. Seals Aiken
In propria persona

Of Counsel:
Ben F. Sweet
F. L. Breen

ACKNOWLEDGMENT OF SERVICE

Service acknowledged of the foregoing Brief of Appellant and copy received.

This the ——— day of September, 1953.

Attorneys for William Richardson,
Appellee.

BLEED THROUGH POOR COPY

E COPY

Office - Supreme Court,
FILED
NOV 23 195
HAROLD B. WILLEY,

IN

Supreme Court of the United States

OCTOBER TERM, 1953

No. 343

G. SEALS AIKEN,
Appellant,

vs.

WILLIAM RICHARDSON,
Appellee

Appeal From Supreme Court of The State of Georgia

PETITION OF G. SEALS AIKEN FOR REHEARING OF ORDER OF NOVEMBER 9, 1953, DISMISSING HIS APPEAL "FOR WANT OF SUBSTANTIAL FEDERAL QUESTION."

PETITION FOR REHEARING

G. SEALS AIKEN,
1106 First Nat'l Bank Bldg.
Atlanta, Ga.
In Propria Persona

Of Counsel:
BEN F. SWEET,
1114 Hurt Building
Atlanta, Ga.
F. L. BREEN,
5 Ivy Street Bldg.
Atlanta, Ga.

BLEED THROUGH POOR COPY

IN

Supreme Court of the United States

OCTOBER TERM, 1953

No. 343

G. SEALS AIKEN,
Appellant,

vs.

WILLIAM RICHARDSON,
Appellee

Appeal From Supreme Court of The State of Georgia

PETITION OF G. SEALS AIKEN FOR REHEARING OF ORDER OF NOVEMBER 9, 1953, DISMISSING HIS APPEAL "FOR WANT OF SUBSTANTIAL FEDERAL QUESTION."

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now comes G. Seals Aiken, the Petitioner above named, and prays that this Court grant a rehearing of its order of November 9, 1953, dismissing his Appeal from the decision and judgment of the Supreme Court of Georgia of May 12, 1953, (*Aiken vs. Richardson*, 209 Ga. 837, 76 S. E. 2nd 393.), and that said order be reversed and jurisdiction be noted of this cause for final hearing in accordance with the Rules of this Court as requested in his Appeal and Statement as to Jurisdiction.

This Court dismissed Petitioner's Appeal "for want of substantial Federal question." Petitioner, therefore, directs particular attention to the following material facts in the Record and applicable and controlling decisions of this Court showing that his Appeal *does* present substantial Federal questions and brings the case clearly within the jurisdiction of this Court and requires a reversal of the Supreme Court of Georgia as a matter of absolute Federal Constitutional right.

Petitioner has been a member of the Bar of the State of Georgia since June 2, 1920, and of the Bar of the Supreme Court of the United States since November 25, 1935. His Appeal to this Court is from the decision of the Supreme Court of Georgia of May 12, 1953, affirming the judgment of State Superior Court Judge Moore overruling Appellant's Motion to Set Aside as Void for want of jurisdiction and as a denial of due process of law and of equal protection of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, a Penal Rule Absolute entered against him as an attorney at law and an officer of the Court in this case by the Georgia Superior Court, *without a trial and without any evidence,* and affirmed by the Court of Appeals of Georgia, *adjudging him guilty of serious and felonious crimes* charged against him in the Penal Rule instituted against him by said State Superior Court for alleged *conversion of funds or embezzlement, forgery, false swearing,* etc. The Penal Rule Absolute complained of in Petitioner's appeal was issued against him by the Georgia Superior Court for $2,189.38 and a penalty of twenty per cent per annum thereon from May 23, 1949, until paid; said penalty alone amounting at this time to approximately $1,953.25. PETITIONER WILL BE SUBJECTED TO BEING INCARCERATED IN JAIL AND DISBARRED unless he complies with said Penal Rule Absolute by paying the above stated principal sum with said twenty per cent penalty per annum thereon from May 23, 1949. IT WILL

DEPRIVE HIM OF HIS MOST PRICELESS POSSESSION—A GOOD NAME AND REPUTATION ACQUIRED BY A LIFETIME OF HONORABLE LIVING (a good name is rather to be chosen than great riches . . . Proverbs 22:1). See *Abbott vs. National Bank of Commerce of Tacoma, Washington*, 179 U. S. 409, 20 S. Ct. 153. IT WILL DEPRIVE HIM OF HIS PROFESSION AND OF HIS ONLY MEANS OF A LIVELIHOOD, TO WHICH HE HAS DEVOTED OVER 33 YEARS OF HIS LIFE WITHOUT A BLEMISH.

All of the above consequences are the direct result of the action of the Supreme Court of Georgia in affirming the order of Superior Court Judge Moore in overruling the Motion of Appellant to Set Aside as Void for want of jurisdiction and as a denial of due process of law and equal protection of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, the Penal Rule Absolute entered against him without a trial, without any evidence whatever against him, without any opportunity whatever to present any evidence in his own behalf, and without a jury.

Appellant drew in question in his said Motion to Set Aside before Judge Moore, in his Bill of Exceptions to the Supreme Court of Georgia, and in his Briefs, Motion for Rehearing, and Motion for Reconsideration in the Supreme Court of Georgia, the validity of the Georgia Statutes identified as Georgia Code Sections 24-210 and 24-206, under which said Penal Rule Absolute was entered as aforesaid without a trial, on the ground that the said Georgia Statutes are repugnant to the Fourteenth Amendment of the U. S. Constitution, as construed and applied to Appellant in this case, setting forth the particulars.

The substantial federal question presented in this ground of Appellant's Appeal is practically identical with that in-

volved in the case of *Hovey vs. Elliott*, 167 U. S. 409, 17 S. Ct. 841, (A PENAL MONEY RULE CASE LIKE THE ONE AT BAR), holding in the headnotes as follows:

> "1 . . . It is a denial of due process of law to strike out an answer, and render a decree pro confesso as a punishment for contempt.
>
> "2. A judgment pro confesso against a defendant whose answer has been stricken out under the assumed power to thus punish for contempt is void for want of jurisdiction, and may be collaterally attacked."

IT IS NOT A CASE LIKE *ZUCHT* VS. *KING*, 260 U. S. 174, 43 S. Ct. 325, INVOLVING THE POLICE POWER OF A STATE TO PROVIDE FOR COMPULSORY VACCINATION, IN WHICH THIS COURT HELD THAT THE QUESTION AS TO VALIDITY OF THE ORDINANCE THERE INVOLVED WAS NOT SUFFICIENTLY SUBSTANTIAL TO SUPPORT THE WRIT OF ERROR IN VIEW OF THE PRIOR DECISIONS OF THIS COURT THAT IT IS WITHIN THE POLICE POWER OF A STATE TO PROVIDE FOR A COMPULSORY VACCINATION.

The CASE AT BAR COMES CLEARLY WITHIN THE PROHIBITION OF THE FOURTEENTH AMENDMENT AS STATED IN *YICK WO* VS. *HOPKINS*, 118 U. S. 356, 6 S. Ct. 1064, cited in the case of *Zucht vs. King*, Supra. The construction and application of the Georgia statutes here involved (Georgia Code Sections 24-210 and 24-206) to Appellant to allow the striking of his sworn answer denying guilt and showing innocence in a Penal proceeding and adjudging him guilty of the crimes charged against him in said Penal proceeding by entering a Penal Rule Absolute against him (without a trial and without any evidence), requiring him to pay the arbitrary sum of $2,189.38 principal and twenty per cent penalty per annum

thereon from May 23, 1949, until paid, brings the said Statutes within the prohibition of the Fourteenth Amendment of the U. S. Constitution as shown by *Hovey vs. Elliott*, Supra. *Said case holds that it is a denial of due process of law in violation of the Fourteenth Amendment to strike out the answer of a defendant in a Penal Money Rule proceeding and render a decree pro confesso against him as a punishment for contempt. There are no decisions to the contrary.*

The decision appealed from in this case places Appellant in the position of holding his "means of living, or any material right essential to the enjoyment of life, at the mere will of another" (the Judge who rendered said "arbitrary edict" against him), and this is "intolerable in any country where freedom prevails, as being the essence of slavery itself." *Yick Wo vs. Hopkins,* 118 U. S. 356. In the language of said case, even if the Georgia Statutes attacked in this case could be considered as fair on their face and impartial in appliance, yet they have been applied and administered to Appellant in the particulars briefly stated above, "by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights," Appellant being thereby denied equal justice in violation of the Fourteenth Amendment.

In the case of *Yick Wo vs. Hopkins*, Supra, the Appellant was "adjudged to pay a fine of $10.00, and, in default of payment, be imprisoned in the county jail at the rate of one day for each dollar of fine until said fine should be satisfied." IN THE CASE AT BAR, THE APPELLANT HAS BEEN SUMMARILY ORDERED IN A PENAL PROCEEDING, WITHOUT A TRIAL AND WITHOUT ANY EVIDENCE, TO PAY APPELLEE THE ARBITRARY SUM OF $2,189.38 and TWENTY PER CENT PENALTY PER ANNUM THEREON FROM MAY 23, 1949 (WHICH

AMOUNTS TO OVER $4,000.00 AT THE PRESENT TIME), AND HE WILL BE INCARCERATED IN JAIL AND DISBARRED IF HE DOES NOT (OR IS UNABLE TO) COMPLY WITH SAID "ARBITRARY EDICT."

Jurisdiction of this Court on this Appeal is overwhelmingly supported by *Hovey vs. Elliott*, 167 U. S. 409; *Cooke vs. U. S.*, 267 U. S. 517, 45 S. Ct. 390; *Yick Wo vs. Hopkins*, 118 U. S. 356; *In Re: Oliver*, 333 U. S. 257; *Texas vs. White*, 10 Wall, 483; *W. & A. Railroad vs. Henderson*, 279 U. S. 639; *In Re: Long*, 40 N. E. 2nd 247; *White vs. George, Marshal, Et Al.*, 195 Ga. 465, 24 S. E. 2nd 787; *Herndon vs. Lowry*, 301 U. S. 242; *Manley vs. Georgia*, 279 U. S. 1.

Appellant also assigned error in his Appeal from the decision of the Supreme Court of Georgia of May 12, 1953, in affirming the judgment of Superior Court Judge Moore of February 6, 1953, overruling Aiken's Motion to Set Aside as Void said Penal Rule Absolute, after going behind the same and allowing evidence presented by Appellant on said Motion, because the said evidence showed positively and without contradiction that Appellant had paid Appellee immediately upon collection the exact and specified amount ($1,591.33) due him under the contract of settlement and as admitted by Appellee in his own deposition (which Appellant introduced on said hearing before Judge Moore); that all of the criminal charges made against Appellant in said penal money rule proceeding are untrue; that Appellant was not (and had not been) in contempt of court; and that there was no basis whatever for the Penal Money Rule or the Penal Rule Absolute. Appellant further assigned error on the ground that the decision of the Supreme Court of Georgia in affirming Judge Moore's ruling under said circumstances deprives Appellant, a citizen of the United States, of due process of law and of equal protection of the law in violation of Section I of the Fourteenth Amendment of the Constitution of the United States by depriving him

BLEED. THROUGH POOR COPY

of the application and benefit of the following privileges and immunities and principles of law granted to other citizens of Georgia under like circumstances and in similar situations:

(a) The principle of law laid down in the cases *Holcombe vs. Dupree*, 50 Ga. 336; *Chipman vs. Barron*, 2 Ga. 232-6; *Prescott vs. Bennett*, 50 Ga. 268; and *Wakefield vs. Moore*, 64 Ga. 268, that a contempt rule against an officer of the court is not subject to the estoppel rule and does not stand in the same category as other cases, and that a rule absolute in such a case is never res adjudicata but is ALWAYS OPEN for the purpose of investigation upon a proper motion or case made, and that the court must necessarily, in a proper case, go behind such a rule absolute or previous adjudication and examine the full and complete truth of the case and render judgment accordingly.

(b) The principle of law requiring the setting aside of the Rule Absolute in this case and the discharge of the rule after Judge Moore properly went behind said Rule Absolute and into the merits of the case and allowed the evidence introduced by Aiken showing positively and without contradiction that Aiken had paid Richardson the exact amount ($1,591.33) due him under the contract of settlement and as admitted by Richardson in his testimony in the record, and that Aiken was not and is not in contempt of court, and that there was no basis whatever for the money rule or rule absolute.

The material evidence presented by Appellant on this point on the hearing of his Motion before Superior Court Judge Moore to set aside as void the Penal Rule Absolute appears in the Record at pages 87-94. No objection whatever was made to said evidence by Appellee, and he offered no evidence.

Jurisdiction of this Court on this ground is supported by

the authorities cited under sub-paragraph (a) above and the following additional authorities:

Norris vs. Alabama, 295 U. S. 587, 55 S. Ct. 579; and
Gallegos vs. State of Nebraska, 342 U. S. 55, 72 S. Ct. 141.

THIS CASE SHOWS, FOR THE FIRST TIME IN AMERICAN HISTORY, A UNITED STATES CITIZEN (APPELLANT) HAS BEEN CONVICTED, PENALIZED, AND SENTENCED AS A FORGER, AN EMBEZZLER, A CHEAT, A SWINDLER, A PERJURER, A FALSE SWEARER, AND A SOLICITOR OF LEGAL BUSINESS, BY THE "ARBITRARY EDICT" (HOVEY VS. ELLIOTT, SUPRA) IN THE FORM OF A PENAL RULE ABSOLUTE OF ONE MAN, A JUDGE OF FULTON COUNTY, GEORGIA, SUPERIOR COURT, WITHOUT A TRIAL, WITHOUT ANY EVIDENCE, AND WITHOUT ANY LAW WHATEVER TO SUPPORT IT; the Motion to Set Aside the same being denied by Superior Court Judge Virlyn B. Moore and affirmed by six of the seven Justices of the Supreme Court of Georgia in the decision appealed from.

As expressly stated by the Chief Justice of the Supreme Court of Georgia in his order allowing this appeal, the Georgia Statutes (Georgia Code Sections 24-210 and 24-206), under which this "arbitrary edict" was issued, have been properly and timely attacked by Appellant as repugnant to the Fourteenth Amendment of the U. S. Constitution, and the decision of the Supreme Court of Georgia is necessarily in favor of their validity, thereby giving the Supreme Court of the United States jurisdiction beyond question of this Appeal on the substantial Federal Constitutional questions involved in a matter of grave and public concern.

The said Georgia Statutes, as construed and applied to Appellant, place all of his property (including his good name and reputation, his profession, and his only means of

livelihood) and liberty subject to the arbitrary will of the Presiding Judge of Fulton County Superior Court. There is nothing in all the annals of American Jurisprudence comparable to such an "arbitrary edict." The most shocking tragedy is that it was rendered in Georgia, U. S. A., and not in Georgia, U. S. S. R.; that it was rendered by a State Judge of the U. S. A. to a loyal and law-abiding U. S. citizen, and not by a Commissar in Russia to some enslaved serf or communist, and that another Judge (Moore) of Fulton County Superior Court overruled a Motion to Set it Aside and he was affirmed by six of the seven Justices of the Supreme Court of Georgia, U. S. A.

The Georgia Statutes, under which the said Penal Rule Absolute was issued and which were questioned by Petitioner as repugnant to the U. S. Constitution, created a presumption that is arbitrary and that operates to deny a fair opportunity to repel it and violates the due process clause of the Fourteenth Amendment as shown by the case of *Manley vs. State of Georgia*, 279 U. S. 1, a criminal case involving a Georgia Banking Statute, and *Western & Atlantic Railroad vs. Henderson*, 279 U. S. 639, a civil case involving a Georgia Presumption Statute against railroads.

The U. S. Supreme Court has held in *Norris vs. State of Alabama*, 295 U. S. 587, 55 S. Ct. 579, that even though a State Statute may be fair on its face, the Fourteenth Amendment affords protection against action of a state through its courts in so construing and applying such a Statute as to deprive a person of due process of law or equal protection of the law.

The decision of this Court of November 9, 1953, dismissing Petitioner's Appeal "for want of substantial Federal question," therefore, was undoubtedly rendered through inadvertence and must be reversed as further shown by the following language from the decision *In Re: Oliver*, 333 U. S. 257:

> "It is 'the law of the land' that no man's life, liberty, or property be forfeited as a punishment until there has been a charge fairly made and FAIRLY TRIED IN A PUBLIC TRIBUNAL. See Chambers v. Florida, 309 U. S. 227, 60 S. Ct. 472. THE PETITIONER WAS CONVICTED WITHOUT THAT KIND OF TRIAL."

Appellant's Brief in Opposition to the Motion to Dismiss his Appeal shows that there is no merit whatever in the contention of Appellee that, "No Federal question is presented, the Supreme Court of the State of Georgia having held as a matter of State practice that the Federal question upon which the Appellant seeks to rely was not seasonably raised and is now res adjudicata and came too late to be considered by that Court and therefore too late to afford a basis for appeal to this Court." Appellee cited no case in his Motion to Dismiss Appellant's Appeal, and no authority can be cited which supports said Motion. He did cite in his Statement Against Jurisdiction the case of *Missouri, Kansas and Texas Railway Company vs. John Sealy, Et. Al.*, 248 U. S. 363. *This case is not in point.* It involved Bills of Lading in a CIVIL case *and has no bearing whatever upon the case at bar.* On the contrary, the case of *Hovey vs. Elliott*, Supra, (relied upon by Appellant), was a Penal Money Rule case like the one at bar and held that a judgment rendered in such a case without a trial and without any evidence constituted a denial of due process of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, was void for want of jurisdiction, and was not entitled to any respect in any judicial tribunal. The said decision is applicable and controlling here and demands that jurisdiction be noted.

There is no such rule of practice in Georgia as that contended by Appellee. The Federal questions presented by this Appeal were properly and timely raised in the manner expressly provided for in *Georgia Code Sections 110-701, 110-702, and 110-709*, by Motion to Set Aside as Void (for

BLEED THROUGH POOR COPY

"defect not amendable which appears on the face of the record or pleadings" and for want of jurisdiction) the Penal Rule Absolute entered by State Superior Court Judge Andrews against Appellant without a trial and without any evidence. Furthermore, attention is invited to the case of *Davis, Director General of Railroads, vs. Wechsler,* 263 U. S. 22, 44 S. Ct. 13, holding that local practice will not be allowed to defeat or to put unreasonable obstacles in the way of a plain and reasonable assertion of Federal rights, and that the U. S. Supreme Court cannot accept as final the decision of a State tribunal as to what are the facts alleged to give rise to a Federal right, or to bar the assertion of it, even on local grounds.

As a matter of Record, Judge Townsend in his special concurrence in the decision of the Court of Appeals of Georgia (*Aiken vs. Richardson,* 85 Ga. App. 180, 68 S. E. 2nd 228) called attention to the attacks levied against the professional integrity of Appellant in the pleadings of Appellee and in the briefs of his counsel in this Penal proceeding in both the Superior and Appellate Courts of Georgia, and stated that in justice to Appellant, he, Judge Townsend, desired to make it clear that said attacks made upon the character of Appellant were unwarranted, and this statement was made without the evidence showing the falsity of said charges, produced by Appellant on the hearing of his later Motion to Set Aside said Void Judgment. Judge Townsend further stated in his said opinion that if the order of Judge Andrews sustaining Appellee's Motion to Strike Appellant's answer on the ground it was evasive had been the subject of review, it was his "personal opinion" that it would have been the duty of the Court to find that Judge Andrews had abused his discretion in holding the answer so evasive as to require its dismissal.

Petitioner's Statement as to Jurisdiction, his Brief in Opposition to Motion to Dismiss, and the order of the Chief

Justice of the Supreme Court of Georgia allowing this Appeal, show without question that the substantial Federal questions relied upon in this case were raised immediately and properly by Petitioner upon their occurrence; that timely and proper legal exceptions were made and urged by him to the adverse rulings thereon of each of the State Courts involved; that said exceptions have been timely and properly preserved and insisted upon throughout all this litigation and are still urged and insisted upon; and Appellant has cited the pages in the Record in this Court showing how, when, where, and in what manner the foregoing was done. They also show the said substantial Federal questions were raised, urged, insisted upon, and preserved in accordance with the procedure required by the Rules and previous decisions of this Court.

Respectfully submitted,

BEN F. SWEET,
F. L. BREEN,
Of Counsel.

G. SEALS AIKEN,
In Propria Persona

CERTIFICATE

I, G. SEALS AIKEN, Petitioner above named, do hereby certify that the foregoing petition is presented in good faith and not for the purpose of delay.

G. SEALS AIKEN

ACKNOWLEDGMENT OF SERVICE

Service of the foregoing Petition for Rehearing is hereby acknowledged and copy received.

This the ..... day of November, 1953.

.....
Counsel for William Richardson,
Appellee.

BLEED THROUGH POOR COPY

E COPY

Office - Supreme Court,
FILED
DEC 21 195
HAROLD B. WILLEY,

IN

Supreme Court of the United States

OCTOBER TERM, 1953

No. 343

G. SEALS AIKEN,
Appellant,

vs.

WILLIAM RICHARDSON,
Appellee.

Appeal From Supreme Court of The State of Georgia

SECOND PETITION OF G. SEALS AIKEN FOR REHEARING OF ORDER OF NOVEMBER 9, 1953, DISMISSING HIS APPEAL "FOR WANT OF SUBSTANTIAL FEDERAL QUESTION"

G. SEALS AIKEN,
1106 First Nat'l Bank Bldg.
Atlanta, Ga.
In Propria Persona

Of Counsel:
BEN F. SWEET,
1114 Hurt Building
Atlanta, Ga.

F. L. BREEN,
5 Ivy Street Bldg.
Atlanta, Ga.

BLEED. THROUGH POOR COPY

IN

Supreme Court of the United States

OCTOBER TERM, 1953

No. 343

G. SEALS AIKEN,
Appellant,

vs.

WILLIAM RICHARDSON,
Appellee.

Appeal From Supreme Court of The State of Georgia

SECOND PETITION OF G. SEALS AIKEN FOR REHEARING OF ORDER OF NOVEMBER 9, 1953, DISMISSING HIS APPEAL "FOR WANT OF SUBSTANTIAL FEDERAL QUESTION"

Now comes G. Seals Aiken, the Petitioner above named, and presents this his second Petition for a Rehearing of the order of this Honorable Court of November 9, 1953, dismissing his appeal from the decision and judgment of the Supreme Court of Georgia of May 12, 1953 (*Aiken* v. *Richardson*, 209 Ga. 837, 76 S. E. 2nd 393), and prays that the said order be reversed and jurisdiction be noted of this cause for hearing as required by Section I of the Fourteenth Amendment of the U. S. Constitution, the Rules of this Court, and U. S. Code Annotated, Title 28, Section 1257, and as requested in Petitioner's Appeal and Statement as to Jurisdiction.

This Court dismissed Petitioner's Appeal "for want of substantial federal question." IT IS FIRMLY BELIEVED THAT PETITIONER'S APPEAL WAS DISMISSED BY THIS COURT *THROUGH INADVERTENCE* BECAUSE IT PRESENTS, BEYOND ANY QUESTION OR DOUBT, SUBSTANTIAL FEDERAL QUESTIONS BRINGING THE CASE CLEARLY WITHIN THE MANDATORY AND CONSTITUTIONAL JURISDICTION OF THIS COURT, AND REQUIRES A REVERSAL OF THE DECISION OF THE SUPREME COURT OF GEORGIA OF MAY 12, 1953, AS A MATTER OF ABSOLUTE FEDERAL CONSTITUTIONAL RIGHT, FOR THE REASONS SET FORTH BRIEFLY BUT POINTEDLY BELOW.

1. THE CONSTITUTION of the United States NO LONGER EXISTS for the benefit and protection of the liberty and property of a natural-born, life-long, and law-abiding citizen of the United States UNDER THE DECISION OF THIS HONORABLE COURT OF NOVEMBER 9, 1953, dismissing Petitioner's Appeal "for want of substantial federal question."

2. Under the decision of this Court of November 9, 1953, IT IS NOW THE LAW OF THE LAND, FOR THE FIRST TIME IN THE HISTORY OF THIS COUNTRY, THAT ANY CITIZEN CAN BE ACCUSED, CONVICTED, AND SENTENCED BY ANY STATE OR FEDERAL COURT JUDGE AS AN EMBEZZLER, A FORGER, A PERJURER, A FALSE SWEARER, A CHEAT, AND A SWINDLER, WITHOUT A TRIAL AND WITHOUT ANY EVIDENCE, AND WITHOUT ANY OPPORTUNITY TO PRESENT ANY EVIDENCE IN HIS OWN BEHALF, AND CAN BE DEPRIVED IN SAID MANNER OF HIS PROPERTY, INCLUDING HIS GOOD NAME AND REPUTATION AND HIS ONLY MEANS OF A LIVELIHOOD, AND OF HIS LIBERTY.

BLEED THROUGH POOR COPY

3. All of that stated in paragraph 2 above has been done to Appellant in this case despite the fact that *Judge Townsend* (in his special concurrence in the decision of the Court of Appeals of Georgia (*Aiken* v. *Richardson*, 85 Ga. App. 180, 68 S. E. 2nd 288), affirming the "Arbitrary Edict" convicting Appellant of, and sentencing him for, said serious crimes without a trial and without any evidence) *called attention to the attacks levied against the professional integrity of Appellant* in the pleadings of Appellee and in the briefs of his counsel in this PENAL proceeding in both the Superior and Appellate Courts of Georgia, *and stated* that in justice to Appellant, *he, Judge Townsend, desired to make it clear that said attacks made upon the character of Appellant were unwarranted, and that* if the order of Judge Andrews sustaining Appellee's Motion to Strike Appellant's answer on the ground it was evasive had been the subject of review, *it was his "personal opinion"* that it would have been the duty of the Court to find *that Judge Andrews had abused his discretion in holding the answer so evasive as to require its dismissal.*

4. The great decision of this Court in the *Milligan* Case, 71 U. S. 281, that:

> "No graver question was ever considered by this Court, nor one which more nearly concerns the rights of the WHOLE PEOPLE; FOR IT IS THE BIRTHRIGHT OF EVERY AMERICAN CITIZEN WHEN CHARGED WITH CRIME, TO BE TRIED and punished ACCORDING TO LAW."

would be relegated by the decision of November 9th in the case at bar to the same low status of the Belgian Peace Treaty in the hands of the Germans, namely that of a MERE SCRAP OF PAPER TO BE IGNORED OR VIOLATED AT WILL BY THIS OR ANY OTHER COURT. To say that such action as that described in paragraph 2 of this petition, by any Judge or Court to any citizen in

this Country in this enlightened age does not present a substantial Federal question would make "black, white; foul, fair; wrong, right; base, noble; old, young; coward, valiant," and is therefore utterly inconceivable.

5. THE CONSTITUTION of the United States, UNDER THE DECISION OF THIS COURT OF NOVEMBER 9, 1953, WOULD ONLY AMOUNT TO A RELIC TO BE VIEWED BY CITIZENS OF THE UNITED STATES HEREAFTER IN THE BUREAU OF ARCHIVES AT WASHINGTON, D. C., AS EVIDENCE OF THE PAST GREATNESS OF THE UNITED STATES OF AMERICA resulting from the conception, adoption, and practice of the principle in the Constitution that no man can be deprived of his life, liberty, or property without due process of law, which has been defined heretofore by this Court as follows:

> "A person's right to reasonable notice of a charge against him, AND AN OPPORTUNITY TO BE HEARD IN HIS DEFENSE—A RIGHT TO HIS DAY IN COURT—ARE BASIC IN OUR SYSTEM OF JURISPRUDENCE; AND THESE RIGHTS INCLUDE, AS A MINIMUM, A RIGHT TO EXAMINE THE WITNESSES AGAINST HIM, TO OFFER TESTIMONY, AND TO BE REPRESENTED BY COUNSEL." (*IN RE: OLIVER*, 333 U. S. 257, 68 S. Ct. 499.)

6. Under the decision of this Court of November 9, 1953, as rendered under the circumstances shown by the record in this case and the Appeal papers of Petitioner, it is no longer the law of the land (as stated by Daniel Webster in the Dartmouth College Case and as held by this Court in *Hovey* v. *Elliott*, 167 U. S. 409) that:

> "By the law of the land is most clearly intended the general law; A LAW WHICH HEARS BEFORE IT CONDEMNS, WHICH PROCEEDS UPON IN-

BLEED. THROUGH POOR COPY

QUIRY, AND RENDERS JUDGMENT ONLY AFTER TRIAL. THE MEANING IS THAT EVERY CITIZEN SHALL HOLD HIS LIFE, LIBERTY, PROPERTY AND IMMUNITIES UNDER THE PROTECTION OF THE GENERAL RULES WHICH GOVERN SOCIETY."

7. Under the decision of this Court of November 9, 1953, it is no longer the law (as held in *Hovey* v. *Elliott*, supra) "that the judicial department of the government is, in the nature of things, necessarily governed in the exercise of its functions by the rule of due process of law," and that the definition of due process given in the next preceding paragraph "is apt and suitable as applied to judicial proceedings, which cannot be valid unless they 'proceed upon inquiry,' and 'render judgment only after trial.' "

8. Under the decision of this Court of November 9, 1953, "the power to violate the fundamental constitutional safeguards securing property" and liberty "exists" in all the State and Federal Courts of the United States and they "may be with impunity set aside by courts on the theory that they do not apply to proceedings" in a PENAL Money Rule case, despite the decision of this Court to the contrary in *Hovey* v. *Elliott*, supra.

9. According to the decision of this Court in *Hovey* v. *Elliott*, supra, ITS DECISION OF NOVEMBER 9, 1953, IN THIS CASE "WOULD CONVERT THE JUDICIAL DEPARTMENT OF THE GOVERNMENT INTO AN ENGINE OF OPPRESSION, AND WOULD MAKE IT DESTROY GREAT CONSTITUTIONAL SAFEGUARDS."

10. Under the decision of this Court of November 9, 1953, it is now the law that any judge of any State or Federal Court in the country may, in a PENAL Money Rule Proceeding, summons a person "to appear and speak,

if he has anything to say," "why the judgment sought should not be rendered," and then, upon the appearance of said party, say to him, "*your appearance shall not be recognized, and you shall not be heard,*" *and then enter "a decree of condemnation, reciting that the default of" said party "had been duly entered,"* despite the prior decision of this Court to the contrary in *Hovey* v. *Elliott*, supra.

11. Under the decision of this Court of November 9, 1953, it is now the law of Georgia that the Statute of this State known as Georgia Code Section 24-210 is not repugnant to or violative of Section I of the Fourteenth Amendment of the U. S. Constitution as construed and applied to Petitioner to authorize a Judge of a State Superior Court of Georgia, *in his discretion and without evidence or trial,* to determine whether the respondent in a PENAL Money Rule has fully responded and to find the answer to be vague, indefinite, and evasive, even though it contains issuable facts and shows reasons why a rule absolute should not be issued, and to be stricken for evasiveness, and to render a PENAL Rule Absolute against the respondent, under said circumstances, WITHOUT EVIDENCE AND WITHOUT A TRIAL, and even though the answer of the respondent has been traversed by the movent of the rule, and even though said Statute itself provides that where the respondent's answer is traversed, the issue thus formed must be tried by a jury, and "upon the trial of such issue the court shall discharge the rule, or make the same absolute, ACCORDING AS THE VERDICT MAY BE FOR OR AGAINST THE OFFICER."

12. Under the decision of this Court of November 9, 1953, it is now the law of Georgia that the Statute of this State known as Georgia Code Section 24-206 is not repugnant to or violative of Section I of the Fourteenth Amendment of the U. S. Constitution as construed and applied to Petitioner in this case to permit the arbitrary

BLEED THROUGH POOR COPY

striking of his answer in a PENAL Money Rule Case denying guilt and all the charges made in said proceeding and showing he had paid the exact amount due by him under the contract of settlement involved, and to permit the entering of a PENAL Rule Absolute against him for $2,189.38 *with twenty per cent penalty per annum thereon from May 23, 1949,* (totaling to date over $4,000.00), *until paid,* and all costs, WITHOUT ANY OPPORTUNITY TO APPELLANT TO PRESENT ANY EVIDENCE IN HIS OWN BEHALF, WITHOUT A TRIAL, AND SUBJECTING APPELLANT TO BEING INCARCERATED IN JAIL AND DISBARRED UPON HIS FAILURE TO COMPLY WITH SAID PENAL RULE ABSOLUTE ENTERED UNDER SAID ARBITRARY CIRCUMSTANCES.

13. Under the decision of this Court of November 9, 1953, it is now the law of this land that it is not a denial of due process of law or of equal protection of the law for any State Superior Court Judge of Georgia to refuse to grant a statutory motion to set aside, as void for want of jurisdiction and as a denial of due process of law and of equal protection of the law, a PENAL Rule Absolute entered against a person in a PENAL Money Rule Proceeding by another Superior Court Judge, WITHOUT A TRIAL, WITHOUT ANY EVIDENCE, AND WITHOUT ANY OPPORTUNITY TO THE RESPONDENT IN SAID *PENAL* PROCEEDING TO PRESENT ANY EVIDENCE IN HIS OWN BEHALF, AFTER ARBITRARILY STRIKING THE SWORN ANSWER OF SAID RESPONDENT DENYING THE CHARGES IN SAID PENAL RULE, and after his said answer was traversed, and without any trial whatever of the issues formed by said traverse.

14. Under the decision of this Court of November 9, 1953, it is now the law that a PENAL Rule Absolute entered by a State Superior Court Judge of Georgia against a

respondent in a PENAL Money Rule Proceeding, WITHOUT A TRIAL, WITHOUT ANY EVIDENCE, AND WITHOUT ANY OPPORTUNITY TO THE RESPONDENT TO PRESENT ANY EVIDENCE IN HIS OWN BEHALF, IS RES ADJUDICATA AFTER IT HAS BEEN AFFIRMED BY THE STATE COURT OF APPEALS OF GEORGIA, EVEN THOUGH THE APPLICABLE AND CONTROLLING DECISIONS OF THE SUPREME COURT OF GEORGIA (THE HIGHEST COURT OF SAID STATE) HOLD THAT SUCH A JUDGMENT IN SUCH A PROCEEDING DOES NOT STAND IN THE SAME CATEGORY AS OTHER CASES, AND IS NEVER RES ADJUDICATA BUT IS ALWAYS OPEN FOR THE PURPOSE OF INVESTIGATION UPON A PROPER CASE MADE, AND THAT THE COURT MUST NECESSARILY, IN A PROPER CASE, GO BEHIND SUCH A RULE ABSOLUTE OR PREVIOUS ADJUDICATION AND EXAMINE THE FULL AND COMPLETE TRUTH OF THE CASE AND RENDER JUDGMENT ACCORDINGLY.

15. Under the decision of this Court of November 9, 1953, THIS COURT CAN UTTERLY IGNORE OR FAIL OR REFUSE TO FOLLOW, WITHOUT REVERSING, THE PRIOR APPLICABLE AND CONTROLLING DECISION OF THIS COURT IN *HOVEY* V. *ELLIOTT*, SUPRA, holding that a PENAL Rule Absolute entered against a respondent in a PENAL Money Rule proceeding, without a trial and without any evidence, is a denial of due process of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, and is therefore void for want of jurisdiction and not entitled to any respect in any judicial tribunal.

16. Under the decision of this Court of November 9, 1953, it is no longer the law, as held by the Supreme Court of Georgia in *Crumm* v. *State*, 205 Ga. 547, 54 S. E. 2nd

BLEED THROUGH POOR COPY

639, that, "A construction of a clause of the U. S. Constitution having been invoked, the interpretation given thereto by the U. S. Supreme Court becomes binding upon this court."

17. Under the decision of this Court of November 9, 1953, it is now the law of Georgia that a State Superior Court Judge as well as the Supreme Court of Georgia can legally deny a motion to set aside a PENAL Rule Absolute entered against a respondent in a PENAL Money Rule case, without a trial and without any evidence, even though the said motion to set aside is specifically authorized by statutes of Georgia and is supported by uncontradicted evidence (Remittance to Richardson of $1,591.33 (R. 23); Richardson's own deposition that he understood, at and before the time of settlement, he would receive "about $1,600.00" (R. 92-3)) showing all of the charges in the PENAL Money Rule proceeding were false, and that there was no basis in fact or in law for such a proceeding or a PENAL Rule Absolute.

18. Under the decision of this Court of November 9, 1953, ANY STATE OR FEDERAL JUDGE "IN THIS COUNTRY IS SO HIGH THAT HE IS ABOVE THE LAW" AND "HE MAY SET THAT LAW AT DEFIANCE WITH IMPUNITY," regardless of the prohibitions against such in the U. S. Constitution and the prior applicable and controlling decisions of the U. S. Supreme Court pursuant thereto, especially in the case of *U. S.* v. *Lee*, 106 U. S. 196, 1 S. Ct. at page 261, holding as follows:

> "NO MAN IN THIS COUNTRY IS SO HIGH THAT HE IS ABOVE THE LAW. NO OFFICER OF THE LAW MAY SET THAT LAW AT DEFIANCE WITH IMPUNITY. ALL THE OFFICERS OF THE GOVERNMENT FROM THE HIGHEST TO THE LOWEST, ARE CREATURES OF THE LAW AND ARE BOUND TO OBEY IT. IT IS THE

ONLY SUPREME POWER IN OUR SYSTEM OF GOVERNMENT, AND EVERY MAN WHO BY ACCEPTING OFFICE PARTICIPATES IN ITS FUNCTIONS IS ONLY THE MORE STRONGLY BOUND TO SUBMIT TO THAT SUPREMACY, AND TO OBSERVE THE LIMITATIONS WHICH IT IMPOSES UPON THE EXERCISE OF THE AUTHORITY WHICH IT GIVES."

19. Under the decision of this Court of November 9, 1953, it is now the law of the land that a State Statute fair on its face does not afford any protection whatever against action of a State through its courts in construing and applying it to deprive a person of his property and liberty without due process of law or equal protection of the law in violation of the Fourteenth Amendment of the U. S. Constitution.

20. Under the decision of this Court of November 9, 1953, the following statement of Honorable Robert H. Jackson, Associate Justice of this Honorable Court, on November 2, 1953, at the dedication of the American Bar Association Center in Chicago (of which Association Petitioner has been a member in good standing for many years), is utterly meaningless and can be ignored by every court in the land:

"We believe it a duty to champion all fundamental rights under the law, BUT WE RECOGNIZE A SPECIAL TRUST AND COMPETENCE TO SAFEGUARD EVERY MAN'S RIGHT TO FAIR TRIAL, ON WHICH EVERY OTHER RIGHT IS DEPENDENT. We cannot approve any use of official powers or position to prejudice, injure, or condemn a person in liberty, property or good name which does not inform him of the source and substance of the charge AND GIVE A TIMELY AND OPEN-MINDED HEARING AS TO ITS TRUTH, SAFEGUARDS WITHOUT WHICH NO JUDGMENT CAN HAVE A SOUND FOUNDATION."

21. Under the decision of this Court of November 9, 1953, "free counsel" so "indispensable to a fair and full administration of justice," (*Mitchum* v. *State of Georgia*, 11 Ga. at page 633), no longer exists, and every lawyer in the country is now subject to be ruled, deprived of his property (including his good name and reputation and his profession), and of his liberty, without a trial and without any evidence, in the arbitrary discretion of any State or Federal Court Judge, at the instance of anyone, and though entirely innocent of any wrongdoing whatsoever.

22. Under the decision of this Court of November 9, 1953, every citizen of the United States who is a lawyer holds his "means of living, or any material right essential to the enjoyment of life, at the mere will of another" (any State or Federal Judge who may desire to enter a PENAL Rule Absolute against him and deprive him of his property, including his good name and reputation and his profession, and of his liberty, without a trial and without any evidence), *and any such judge may apply to every such citizen any statute*, even though fair on its face, *"with an evil eye and an unequal hand,"* in utter disregard of the applicable and controlling decision of this Court in *Yick Wo* v. *Hopkins*, 118 U. S. 356, *and no natural-born, life-long, and law-abiding citizen of the United States has as much right or protection under the law of his own country as a Chinaman.*

23. Under the decision of this Court of November 9, 1953, any State legislature can now enact and enforce any statute which declares a citizen presumptively guilty of any crimes charged against him and which therefore creates a presumption that is arbitrary and operates to deny a fair or any opportunity to repel it, despite the applicable and controlling decisions of this Court to the contrary in the cases of *Manley* v. *State of Georgia*, 279 U. S. 1; and *Western & Atlantic Railroad* v. *Henderson*, 279 U. S. 639.

24. Under the decision of this Court of November 9, 1953, the government of the United States is now a government of PERSONS and not of LAWS, despite the decision of this Court to the contrary in *U. S.* v. *Dixon*, 40 U. S. 141, and in all decisions rendered by it on this point prior to its decision of November 9, 1953, in the case at bar.

Petitioner has been a member of the Bar of this Court for over eighteen years. As an officer of this Court, it is his duty to uphold the honor, dignity, and purity of the Court. It is also the duty of the Court to protect him in the legal discharge of his duties and responsibilities and in the exercise of his prerogatives in said capacity. According to the Canons of Professional Ethics of the American Bar Association:

> "The lawyer owes 'entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability,' *to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor* or public unpopularity *should restrain him from the full discharge of his duty.* In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. BUT IT IS STEADFASTLY TO BE BORNE IN MIND THAT THE GREAT TRUST OF THE LAWYER IS TO BE PERFORMED WITHIN AND NOT WITHOUT THE BOUNDS OF THE LAW. THE OFFICE OF ATTORNEY DOES NOT PERMIT, MUCH LESS DOES IT DEMAND OF HIM FOR ANY CLIENT, VIOLATION OF LAW OR ANY MANNER OF FRAUD OR CHICANE. He must obey his own conscience and not that of his client.
>
> ". . . A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, par-

ticularly with reference to their conduct towards Courts, judicial officers, jurors, witnesses and suitors. If a client persists in such wrong-doing, the lawyer should terminate their relation."

The Canons of Judicial Ethics of the American Bar Association provide in part:

"IT IS THE DUTY OF ALL JUDGES IN THE UNITED STATES TO SUPPORT THE FEDERAL CONSTITUTION AND THAT OF THE STATE WHOSE LAWS THEY ADMINISTER; IN SO DOING, THEY SHOULD FEARLESSLY OBSERVE AND APPLY FUNDAMENTAL LIMITATIONS AND GUARANTEES."

"He (the judge) should be temperate, attentive, patient, impartial, and, since he is to administer the law and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts."

"In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; HE SHOULD ADMINISTER JUSTICE ACCORDING TO LAW, and deal with his appointments as a public trust . . ."

"Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's; and the cause that is too hard for you, bring it unto me, and I will hear it." Deuteronomy, I, 16-17.

As stated by the Supreme Court of Georgia in *Garrison* v. *Wilcoxson*, 11 Ga. 159, lawyers,

". . . are officers of the court—amenable to its au-

thority, subject to its correction, and restrained by usages of honor and courtesy, which, however, in some instances disregarded, ARE AS ANCIENT IN THEIR ORIGIN AND AS POTENT FOR GOOD, AND AS GENERALLY RESPECTED, AS ANY USAGES WHICH BELONG TO ANY CLASS OF THE HIGHEST GRADE OF CIVILIZED MAN. THE DUTIES OF THE ADVOCATE ARE AMONG THE MOST ELEVATED FUNCTIONS OF HUMANITY."

As stated by the Supreme Court of Georgia in *Moody & Wife* v. *Davis*, 10 Ga. at 410:

"As officers of the Court, the duties of counsel are not in conflict with those which devolve upon him as the representative of a party. They are the friends of the court, enlisted with him in the sublime work of discovering truth, and dealing out justice between man and man. . . The mandate restrains the Judge from going beyond or outside of the law, and enjoins him to enforce the law. He shall in his discretion make no new laws, and he shall, without discretion, give effect to the laws that are of force. . . It is the duty of the Judge to enforce the laws of the State, made in accordance with the State and Federal Constitutions—THE WHOLE LAW, as it applies, in his judgment, to the cases which come before him. . . HE HAS NO RIGHT AND NO POWER TO WITHHOLD THE APPLICATION OF ONE SINGLE PRINCIPLE OF LAW, TO A SINGLE CASE OVER WHICH HE HAS JURISDICTION; HE HAS NO DISPENSATION, JUSTIFYING OR EXCUSING AN OMISSION TO APPLY THE LAW. . ."

"Whilst judgment belongs alone to the Judge—enlightenment is the province of the lawyer, and I apprehend that no Judge can be found so presumptuously vain, or so flagrantly unjust, as not to recognize, and that too with grateful emotions, the aid which he derives, in the discharge of duties more solemn than belong to any other functionary, from an able bar."

As stated by the Supreme Court of Georgia, speaking through the late noted Mr. Justice Nisbet, in the case of *Mitchum* v. *State*, 11 Ga. at page 630:

> ". . . it is the duty of counsel to guard, by the most scrupulous propriety of demeanor, in the conduct of a cause, THE DIGNITY AND HONOR OF THE PROFESSION. Connected as it is, most intimately, with the administration of justice, *it should be protected most vigilantly from falling into popular disrepute. It ought*, as I verily believe it does, *to command the respect of the wise, and the reverence of the good.*"

According to the American Bar Association Journal of December, 1953, Mr. Justice Burton of this Court in a recent address before the Judicial Conference of the Third Judicial Circuit, said when young people ask him "WHAT THE SUPREME COURT IS FOR," he tells them that the courts are like umpires in a baseball game and that "The laws are the rules." He stated that baseball players do not expect the umpire to be perfect but that they do "EXPECT THE UMPIRE TO KNOW THE RULES, TO BE HONEST, TO APPLY THE RULES. . ." In conclusion, he said:

> "There is ground to believe that both the American people and their Senators expect from their COURTS, NO LESS THAN FROM THEIR BASEBALL UMPIRES, HONEST, INFORMED AND INDEPENDENT JUDGMENTS, REGARDLESS OF WHOM THE DECISIONS MAY DISAPPOINT.
>
> "Our legal profession owes no more sacred obligation than to justify such a faith in the integrity and independence of the judiciary."

A MERE CURSORY EXAMINATION OF THE RECORD AND APPEAL PAPERS IN THIS CASE WILL SHOW, WITHOUT ANY DOUBT WHATEVER, THAT

"THE LAWS" (WHICH "ARE THE RULES") APPLICABLE TO *THIS CASE WERE NOT APPLIED* BY THIS COURT IN DISMISSING APPELLANT'S APPEAL, OR BY ANY OF THE STATE COURTS INVOLVED.

This high court, in the performance of its sacred constitutional duty in this case, is in a position similar to that occupied by it in the *Merryman* Case, in which it stated in the words of the great Chief Justice Taney:

> "The Constitution provides . . . that 'no person shall be deprived of life, liberty or property, without due process of law.' . . ."
>
> "And THESE GREAT AND FUNDAMENTAL LAWS, WHICH CONGRESS ITSELF COULD NOT SUSPEND, HAVE BEEN DISREGARDED, AND SUSPENDED, like the Writ of Habeas Corpus, by a Military order, supported by force of arms. Such is the case now before me, and I can only say, that IF THE AUTHORITY WHICH THE CONSTITUTION HAS CONFIDED TO THE JUDICIARY DEPARTMENT AND JUDICIAL OFFICERS MAY THUS, UPON ANY PRETEXT OR UNDER ANY CIRCUMSTANCES, BE USURPED by the military power at its discretion, the PEOPLE OF THE UNITED STATES ARE NO LONGER LIVING UNDER A GOVERNMENT OF LAWS, BUT EVERY CITIZEN HOLDS LIFE, LIBERTY, AND PROPERTY AT THE WILL AND PLEASURE OF THE ARMY OFFICER IN WHOSE MILITARY DISTRICT HE MAY HAPPEN TO BE FOUND.
>
> "IN SUCH A CASE MY DUTY WAS TOO PLAIN TO BE MISTAKEN. I HAVE EXERCISED ALL THE POWER WHICH THE CONSTITUTION AND LAWS CONFER UPON ME, BUT THAT POWER HAS BEEN RESISTED BY A FORCE TOO STRONG FOR ME TO OVERCOME. IT IS POSSIBLE THAT THE OFFICER WHO HAS IN-

> CURRED THIS GRAVE RESPONSIBILITY MAY HAVE MISUNDERSTOOD HIS INSTRUCTIONS AND EXCEEDED THE AUTHORITY INTENDED TO BE GIVEN HIM. I shall, therefore, order all the proceedings in this case, with my opinion, to be filed and recorded in the Circuit Court of the United States for the District of Maryland, and direct the Clerk to transmit a copy, under seal, to the PRESIDENT OF THE UNITED STATES. IT WILL THEN REMAIN FOR THAT HIGH OFFICER, IN FULFILLMENT OF HIS CONSTITUTIONAL OBLIGATION, TO 'TAKE CARE THAT THE LAWS BE FAITHFULLY EXECUTED,' TO DETERMINE WHAT MEASURES HE WILL TAKE TO CAUSE THE CIVIL PROCESS OF THE UNITED STATES TO BE RESPECTED AND ENFORCED."

In the case at bar "THESE GREAT AND FUNDAMENTAL LAWS, WHICH CONGRESS ITSELF COULD NOT SUSPEND, HAVE BEEN DISREGARDED" by this Honorable Court in its decision of Nov. 9, 1953, dismissing Appellant's appeal "for want of substantial Federal question"; by the State Superior Court Judge who entered the "ARBITRARY EDICT" in question against Appellant without a trial and without any evidence, in a PENAL case; and by every State Judge who has upheld it. In this case this Court's "DUTY" IS "TOO PLAIN TO BE MISTAKEN," and IT HAS NOT "EXERCISED ALL THE POWER WHICH THE CONSTITUTION AND LAWS CONFER UPON" IT, AND IT HAS NOT "BEEN RESISTED BY A FORCE TOO STRONG FOR" IT "TO OVERCOME." UNDER THE EXPRESS PROVISIONS OF THE CONSTITUTION AND THE APPLICABLE DECISIONS OF THIS COURT PURSUANT THERETO, IT NOT ONLY HAS AMPLE POWER BUT IS ALSO CLOTHED WITH THE MANDATORY DUTY UNDER THE FACTS AND CIRCUMSTANCES IN THIS CASE, AS SHOWN BY THE RECORD AND THE APPEAL PAPERS, TO NOTE JURISDICTION OF

THIS APPEAL AND, AFTER A HEARING, TO REVERSE THE DECISION OF THE SUPREME COURT OF GEORGIA OF MAY 12, 1953, AFFIRMING SAID "ARBITRARY EDICT." THERE IS NO FORCE RESTRAINING THIS HONORABLE COURT FROM PERFORMING ITS SAID MANDATORY CONSTITUTIONAL DUTY. TO USE THE LANGUAGE OF THIS COURT IN EX PARTE MILLIGAN, SUPRA, THE PROVISIONS OF THE CONSTITUTION AND THE DECISIONS OF THIS COURT PURSUANT THERETO REQUIRING THE NOTING OF JURISDICTION AND REVERSAL OF THE DECISION APPEALED FROM ARE "EXPRESSED IN SUCH PLAIN ENGLISH WORDS, THAT IT WOULD SEEM THE INGENUITY OF MAN COULD NOT EVADE THEM."

The record and appeal papers in this case show that Appellant has performed his duties as an able and honorable lawyer and as a loyal and vigilant American citizen, and it now remains for this Honorable Court to fulfill its "CONSTITUTIONAL OBLIGATION" by noting jurisdiction of this appeal and reversing the decision of the Supreme Court of Georgia appealed from, and thereby removing forever the "blot upon our jurisprudence and civilization" caused by the "arbitrary edict" entered against Appellant under the circumstances shown.

Petitioner, therefore, deems it to be his sacred duty as a lawyer, as an officer of this Court, and as a good American citizen, to respectfully call the Court's attention to the foregoing serious consequences which will result to the entire country if jurisdiction is not noted in this case, and the decision of this Court of November 9, 1953, is not reversed. In the language of this Court in *Hovey* v. *Elliott*, Supra, Petitioner deems it his duty to do all in his legal and proper power to prevent this erroneous, unprecedented, and uncon-

stitutional decision in a matter of such grave and public concern from becoming final and conclusive and therefore a permanent "BLOT UPON OUR JURISPRUDENCE AND CIVILIZATION."

In conclusion, Appellant can truthfully say in the words of St. Paul:

> "I am now ready to be offered" for my Lord and Country.
>
> "I have fought a good fight . . . I have kept the faith;
>
> "Henceforth there is laid up for me a crown of righteousness, which the Lord, the righteous judge, shall give me at that day: and not to me only, but unto all them that love his appearing." (II Tim. 4:6-8.)

After all, the Lord did not have a trial but His false accusers were nevertheless, allowed by a Roman Judge, Pilate, to crucify Him, despite the statement of said faithless Judge, "I am innocent of the blood of this just person." That was allowed by God to be done that our sins might be forgiven and we might have eternal life. Our Lord, therefore, "humbled Himself, and became obedient unto death, even the death of the cross." Appellant's years of toil and sacrifice in this righteous, patriotic, and constitutional cause is insignificant in comparison with that of the Lord, but Appellant hopes and prays they will not be in vain; firmly believing and confidently relying upon the following words of the Scripture:

> ". . . be ye steadfast, unmoveable, always abounding in the work of the Lord, forasmuch as ye know that your labor is not in vain in the Lord." (I Cor. 15:58.)
>
> "For God shall bring every work into judgment, with every secret thing, whether it be good, or whether it be evil." (Ec. 12:14.)

"For there is nothing covered that shall not be revealed, neither hid that shall not be known." (Luke 12:2.)

"In the day when God shall judge the secrets of men by Jesus Christ according to my gospel." (Ro. 2:16.)

If Nathan Hale could gladly give his life for his country with the only regret that he had but one life to so give, Appellant, with God's help, can sacrifice, if necessary, his liberty and property, without a trial and without any evidence, for the same great cause—The United States of America under the Declaration of Independence and the Constitution.

Respectfully submitted,

BEN F. SWEET,
F. L. BREEN,
Of counsel.

G. SEALS AIKEN,
In Propria Persona

CERTIFICATE

I, G. Seals Aiken, Petitioner above named, do hereby certify that the foregoing Petition is presented in good faith and not for the purpose of delay.

G. SEALS AIKEN.

ACKNOWLEDGMENT OF SERVICE

Service of the foregoing Petition for Rehearing is hereby acknowledged and copy received.

This the .... day of December, 1953.

.....

Counsel for William Richardson, Appellee.

BLEED THROUGH POOR COPY

No. 343. AIKEN *v.* RICHARDSON. Appeal from the Supreme Court of Georgia. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for the want of a substantial federal question. *G. Seals Aiken, pro se. Ralph Williams* for appellee. Reported below: 209 Ga. 837, 76 S. E. 2d 393.